

THE CULTURE OF PHOTOGRAPHY IN PUBLIC SPACE

edited by Anne Marsh, Melissa Miles and Daniel Palmer

THE CULTURE OF PHOTOGRAPHY IN PUBLIC SPACE

edited by Anne Marsh, Melissa Miles and Daniel Palmer

First published in the UK in 2015 by
Intellect, The Mill, Parnall Road, Fishponds, Bristol, BS16 3JG, UK

First published in the USA in 2015 by
Intellect, The University of Chicago Press, 1427 E. 60th Street, Chicago,
IL 60637, USA

Copyright © 2015 Intellect Ltd

All rights reserved. No part of this publication may be reproduced, stored in a
retrieval system, or transmitted, in any form or by any means, electronic, mechanical,
photocopying, recording, or otherwise, without written permission.

A catalogue record for this book is available from the
British Library.

Cover image: © Michael Wolf, 'Street View/ Interface' #9

Series editor: Alfredo Cramerotti

Design and typesetting: Stephanie Sarlos

Production manager: Bethan Ball and Claire Organ

Copyediting: MPS Technologies

Critical Photography Series ISSN 2041-8345

ISBN 978-1-78320-459-5

ePDF ISBN 978-1-78320-460-1

Printed & bound by Gwasg Gomer Cyf / Gomer Press Ltd, UK

THE CULTURE OF PHOTOGRAPHY IN PUBLIC SPACE

edited by Anne Marsh, Melissa Miles and Daniel Palmer



intellect Bristol, UK / Chicago, USA

Contents

6	Foreword Alfredo Cramerotti
8	Acknowledgements
9	Introduction Melissa Miles
22	<i>Chapter 1</i> Standing on Shifting Ground: Privacy and Photography in Public Melissa Miles
44	<i>Chapter 2</i> Tilt Simon Terrill
56	<i>Chapter 3</i> "No Credible Photographic Interest": Photography Restrictions and Surveillance in a Time of Terror Daniel Palmer and Jessica Whyte
74	<i>Chapter 4</i> Street View/Interface Michael Wolf
82	<i>Chapter 5</i> Bill Henson and the Polemics of the Nude Child in Photography Alexandra Heller-Nicholas and Anne Marsh

100	Chapter 6 The Sleepers and Trafalgar Square Cherine Fahd
110	Chapter 7 Criminalizing “Camera Fiends”: Photography Restrictions in the Age of Digital Reproduction Jessica Whyte
134	Chapter 8 In the Event of Amnesia the City will Recall Denis Beaubois
144	Chapter 9 The Face in Digital Space Martyn Jolly
158	Chapter 10 From Sixteen Google Street Views Jon Rafman
168	Chapter 11 Google Street View and Photography in Public Space Daniel Palmer
185	Further Reading
188	Contributors

Foreword Alfredo Cramerotti

From the Series Editor to the Reader

IN AND OUT OF THE PUBLIC SPHERE

What we commonly understand as the public sphere—which is bigger than just public space, incorporating as it does relations, speech and time where things can become and be public—is more a concept than a thing. Let's take as an example public personae. In the past, according to cultural theorist Boris Groys, figures like politicians needed the visual narrative provided by artists in order to become “fully” public, but nowadays this division of labour (the politics by politicians; the representation of politics by artists) is no longer the case (Groys 2008). Politicians, alongside film celebrities, sports stars, terrorists and multinational CEOs, generate vast quantities of images and shared visual narratives, with the extra layer of also being in charge of “curating” their own public image. They inscribe themselves into the public consciousness through this act of curating their own visual self.

An individual's public presence is immediately represented, mediated, circulated and interpreted through the media and by the media, including also protean media such as the blogosphere or online content aggregation tools. The public sphere is more a concept than a thing because it is extremely difficult to pin down what it does and how it affects an individual. In this sense, does art function as a design tool by which we make things work, rather than something to intellectually stimulate? It is not really about how I design and inscribe myself into the world, but rather how I negotiate the way the world designs and inscribes me (Groys 2008). This is the crucial matter when we deal with the notion of the public sphere.

The media machine distributes images of all kinds at levels of production with which the individual artist or collective cannot compete. The only way for an artist to contribute in shaping the public sphere is to go beyond the art system and become an artwork; to cease producing images (or other forms of narrative) in order to become an image.

From adding to the public sphere through one's work to becoming the work itself, subjected to the gaze of the media—a sort of meta-artist—is quite a radical step, but it is not one that was unannounced: for nineteenth-century philosopher Friedrich Nietzsche it was better to be an artwork than to be an artist. And so it goes. We are now in a situation in which everyone is expected to curate his or her own narrative in the public sphere in order to respond to the “aesthetic responsibility” that society demands from us. As Groys asserts, self-design has become compulsory; the “mass cultural practice par excellence” (Groys 2008). Hence, “aesthetic evaluation” is at the core of the public sphere, where artists and audiences alike act together in shaping the dimension. Unlike past claims about everyone being an artist, in this age it seems that everyone is an artwork, and—more problematically—his or her author too.

REFERENCE

Groys, Boris (2008), “Self-Design and Aesthetic Responsibility,” Lecture at Frieze Art Fair, London, 16 October. Text published in *e-flux Journal* no. 7, June 2009. Available at <http://www.e-flux.com/journal/self-design-and-aesthetic-responsibility/>.

Acknowledgements

A project of this scope could not be undertaken without the assistance of a significant network of support. The research for this book was funded by an Australian Research Council Linkage Grant in partnership with the Centre for Contemporary Photography, Melbourne. Our relationship with the CCP was invaluable. Aside from hosting the project's symposium and the associated exhibition "In Camera and In Public" in 2011, the CCP also facilitated the distribution of our surveys and provided space for our focus groups. Naomi Cass and Rebecca Chew at CCP also offered ideas about photographers to consider in the project. We also wish to thank the many photographers who agreed to be surveyed, interviewed and to participate in the focus groups. They generously shared their time and experiences of working as a photographer in this fraught environment.

Mark Davison from the Faculty of Law at Monash University also warrants our gratitude, as he helped shape the larger project as a team member and contributed important legal knowledge and advice. A number of research assistants helped us during this project, including Holly Arden, Jessica Whyte and Alexandra Heller-Nicholas, on a variety of tasks including assisting with literature reviews, image permissions and liaising with photographers. Along with Heller-Nicholas and Whyte, who also contributed to this collection, we would additionally like to thank Martyn Jolly for his chapter. Bethan Ball, Claire Organ and the staff at Intellect also deserve our appreciation, and many thanks to the series editor of the Critical Photography series, Alfredo Cramerotti.

Finally, of course, we thank the photographers who have kindly contributed their work to this publication: Cherine Fahd, Denis Beaubois, Simon Terrill, Michael Wolf and Jon Rafman. Thanks also to Sarah Van Ingelgom (Blue Lotus Art Consultancy), and Jennifer Chaput.

—Anne Marsh, Melissa Miles and Daniel Palmer

Introduction Melissa Miles

There has been a troubling shift in perceptions of photography in public space. Photography's unprecedented ubiquity, fostered by the proliferation of mobile phones and digital cameras and the ease of online circulation, has sparked anxieties that have been fuelled by a range of particularly volatile social and political issues. Fears of terrorism, crimes against children and the perceived loss of personal privacy have become embroiled with concerns about the uncontrolled distribution of photographs online, and transformed photography into a threat. The resultant atmosphere of paranoia and uncertainty has led to a range of new restrictions on the practice of photography, and has seen photographers—whether professional or amateur—frequently questioned, threatened or abused simply for using their cameras in public.

The level of anxiety generated in response to a series of controversial Australian events is indicative of the tensions now surrounding photography in public space in other western liberal democracies. A flurry of press activity developed in 2002 when photographs of male teenage rowers, taken in public but without their consent, were posted on what was described as a “gay website” (Lamont 2005). Later that year, photographs of a 16-year-old male surf-lifesaver appeared on a sports fetish website, prompting further outrage (Zonneveldt 2002). Media reports of the discovery of a website containing hundreds of photographs of children playing at Brisbane's South Bank parklands and other recreational sites provoked yet another debate about photography in public in January 2005 (Burke and McRae 2005). Although police found no links between this site and pornographic or paedophilic websites, it was shut down. All of these controversies involved photographs that were taken in public space, and none of the photographs contained content that could be deemed offensive under the law. Anxieties about photography are not limited to the image itself. Instead, a range of more complex social, technological and political issues underpin these rising anxieties, affecting the practice, circulation and consumption of contemporary public photography today.

This book critically examines the contemporary culture of photography in public space, and analyses its many implications for photographers and members of the public more broadly.

Far from being limited to the media, debate around these issues has informed calls for law reform in relation to privacy and the circulation of images online, and legitimated the implementation of countless new restrictions on the practice of photography in and around public swimming pools, shopping centres, railway stations, beaches, sporting grounds and schools. The photographs and essays contained in this volume offer an account of these restrictions, the events and anxieties that gave rise to them, and the various ways in which photographers, theorists, politicians and members of the public have sought to come to grips with their own place within this uncertain environment.

Case studies and examples centre on western liberal democracies, and provoke a discussion of the contradictions and risks associated with photography restrictions in countries with a strong tradition of claiming liberal rights and freedom of movement, speech and expression. The distinct political issues that confront photographers and members of the public in other parts of the world have been addressed eloquently and convincingly by other theorists, such as Ariella Azoulay. Rather than claim to offer a universal account of these issues, the contributors to this book remain mindful of the specific legal frameworks that facilitate and limit photographic practices in different parts of the world, and accordingly limit their discussion to Australia, Europe and the United States.

When this book was conceived, a sequence of isolated events in Australia hinted at the impact that this atmosphere of uncertainty was having on photographers. News reports of confrontations between authorities and photographers became more prevalent in the mid-2000s. In December 2006, photographer Rex Dupain had his camera confiscated, and was questioned for 25 minutes by police on Bondi Beach as he tried to recreate famous beach photographs taken by his father, the celebrated Australian modernist photographer Max Dupain. Also in that year, Geelong Camera Club member Hans Kawitzki was confronted by security guards for taking photographs of the Geelong Shell oil refinery. The police visited Kawitzki at his home later that night, and warned him to tell fellow club members to stay away from such “sensitive areas.” Geelong police Chief Inspector Wayne Carson gave voice to the rising suspicion of photography, commenting: “While they are not breaking any law, if you take photos (of industry) in the current climate don’t be surprised to be asked by police why you are doing it” (Strong 2006). Fears of terrorism lurk not far beneath the surface of these concerns, but have been invoked more explicitly in justifications of other forms of photography restrictions. When grandmother and amateur photographer Val Ross was approached by security guards at Melbourne’s Southgate shopping and entertainment complex in 2006 and advised to stop taking photographs, the request was reportedly couched in terms of “the terrorism overseas” (Webb and Ker 2006).

In an effort to determine the extent of the effects of this climate on the photography community, Anne Marsh, Daniel Palmer, Jessica Whyte and I conducted an online survey of Australian photographers in partnership with the Centre for Contemporary Photography (CCP) in Melbourne in 2010–11. The results are startling. Of the 261 Australian photographers who completed the survey, 74.7% reported that they had been asked to stop taking photographs while working in public at one time or another. 15.9% of those had been threatened with physical harm during the process, 17.6% were threatened with legal action or arrest and 26% were subject to demands that the photographs be deleted or film confiscated. Although “spy phones” (Mickelborough and Rose 2003: 15) and “perverts with mobile phone cameras” (Thorn 2005) are targeted in much of the media coverage of photography controversies, it is telling that in this survey only one respondent was using a mobile phone camera when they were asked to stop photographing, and 76.3% were using an SLR. Moreover, these confrontations appear to be on the rise. Although all occurred during the previous ten years, 82% happened during the previous three years.

As the scope of the project widened, it became clear that this Australian experience was not isolated, and comparable issues were shaping the experience of photographers in the United Kingdom, the United States and Europe. The pervasive sense that our privacy and security are under threat from invisible sources and viewers—whether they be Google Street View’s all-seeing eye, drones, countless urban surveillance cameras or potentially millions of anonymous Internet users—has intensified the paranoia that is being directed at more visible signs of public photography: individual photographers. Street protests staged by photographers in the United Kingdom and Australia in 2010 demonstrate that many thousands of these photographers are unwilling to bear the weight of the community’s misdirected fears. Waving placards declaring “I’m a photographer not a criminal” and “Not a crime,” these photographers took to the streets of London and Sydney demanding more respect for photographers rights. However, as the rights of photographers frequently conflict with the rights of individuals and property owners, such claims for rights are unlikely to result in meaningful change. At issue is not so much the law, but the confusion about the law amongst photographers and the people with whom they share public space. This confusion is compounded by the web of contradictory laws that affect photographers working in public space in different parts of the country and around the world.¹

In this atmosphere of uncertainty, security guards and members of the public are taking the law into their own hands and policing photographic practices, often according to the mistaken assumption that laws have been infringed. Amongst the 74.7% of people in our survey who had been asked to stop taking photographs in public, most were approached either by

private security guards (53.4%) or citizens (27%), rather than the police. The reasons behind the objections were diverse: 27.2% noted security or terrorism concerns, 26.5% involved allegations that taking a photograph in that particular place was an offence, 14.8% reported that the property owner claimed exclusive rights to photograph in that area and 11.7% said the reason given was privacy concerns. The survey also indicated that there are no particular hot spots for confrontation or sites in which people feel more vulnerable, as suggested by the media's focus on children's play areas, swimming pools or beaches. 18.9% of confrontations took place in a suburban street, 17.6% in a city street, 14.9% in a shopping centre, 14.9% in a railway station, 4.1% on a beach, 2.7% in a public park and just 1.4% in or around a school or at a public swimming pool. 24.3% of respondents cited "other" spaces, many noting that they had experienced confrontations at several of these sites.

Although these confrontations occurred largely in streets, parks, beaches and other spaces freely accessible to members of the public, it is important not to limit the study of photography in public space to particular areas. Public space cannot be simply marked out on a map.² Such topographical approaches to public space fail to acknowledge the subtleties and complexities of its uses and meanings. The privatization of public spaces, such as shopping centres, railway stations and gated communities, poses a challenge to topographical concepts of public space by blurring the boundaries between the public and private. These privately owned public spaces are designed to facilitate certain activities, like shopping or public transportation, and are open to members of the public providing that they obey the rules established by the owners. Photographers working in such spaces may be surprised to find that their activities can be legitimately restricted. Topographical approaches also risk delimiting public space as an inert stage on which public life takes place. Implicit is the assumption that publics are constituted prior to their occupation of public space. In contrast, public space is a medium through which social and group identities are both forged and challenged. Publics are developed through their occupation of public space and their participation in it. In this sense, public space is constitutive of public life.

Consequently, we must acknowledge the ways that public spaces are also defined by their uses as sites of action or collective discussion.³ Jürgen Habermas (1989) famously used the term "public sphere" to describe a more abstract form of public space characterized by ideals of debate, discussion, participation and engagement. Hannah Arendt (1958) preferred the term "public realm" when referring to this domain for political action. The ideals of openness and accessibility often associated with the public sphere are rarely realized. The historians Geoffrey Eley (1992) and Nancy Fraser (1992) both argue that while the public sphere was established as part of a challenge to the power of an unrepresentative state, it

was underpinned by the values of a bourgeoisie claiming to represent universal interests. In ignoring differences of gender, race and class, these universalist approaches to the public sphere ultimately contribute to patterns of exclusion.

Some theorists claim that the public is disappearing altogether (Sennett 1978; Robbins 1993; Sorkin 1992), while others celebrate the Internet as a new utopian space for free and open public action (Mitchell 2003). What is clear from these debates is that although there remain some obvious thresholds that dramatize the separation of the public from the private (notably the movement from the house to the street), an unambiguous distinction between these terms is very difficult to maintain. The Internet enables us to take part in an array of public actions and discourses from the traditionally private domain of the home. Coupled with our increased demand for privacy in public, these changes have shifted the boundaries through which public space has been defined historically.

Photography has a long history as a tool for the formation and reformation of public life. Social documentary photographers such as Jacob Riis, Walker Evans and Dorothea Lange were motivated by the belief that looking at pictures of suffering and injustice would help to promote social reform. A sense of shared public life and shared responsibility underpinned their work in the hope that their photographs would foster empathy, mutual understanding and change. Theorists such as Martha Rosler (2003), Susan Sontag (1977, 2003), Abigail Solomon-Godeau (2004) and John Berger (2003) have critiqued the emotive qualities of humanist documentary photography heavily since the 1970s. Photographs of disempowered or disenfranchised peoples have been criticized in terms of a double violence in which these victims of economic exploitation are also made victims of the photographers' and spectators' voyeuristic gaze. However, despite this criticism, photography still powerfully allows us to negotiate public life, and plays an important role in questioning the way we think about and define our realities.

Like photography, public spaces act as venues of what Kurt Iveson describes as "public address" (2009). Photography enables us to imagine that we are participating in a shared dialogue about public life. In photography, public spaces also become *objects* of public address or the focus for debate. *The Culture of Photography in Public Space* reveals how photographs and the practice of photography in public may trigger debate about the use of public space, its function, limits and norms. Photography helps to create a sense of ownership of public space, makes it meaningful and fosters a sense of mutual recognition amongst members of the public. Changes in photographic technologies also inform shifts in public space. Mobile media such as camera phones emphasize the mobility of public address, and

facilitate the interaction between public urban spaces and contemporary media spaces on screens of all shapes and sizes (Iveson 2009).

Given the importance of photography to the production of public space, it is worrying that our survey revealed a tendency towards self-censorship amongst Australian photographers working in public. 69.8% of respondents to this survey noted that the fear of being confronted or threatened has prevented them, on occasions, from taking photographs in public spaces, and 75.4% reported that the fear of being confronted or threatened has changed the way that they take photographs in public. Sydney-based photographer David Knight even stated that he has given up on beach photography altogether because he does not want to be labelled “as some sort of pervert” (Verghis 2005: 31). Accusations of self-censorship were also directed at Bill Henson in response to his exhibition in Sydney in 2010, his first at the Roslyn Oxley9 Gallery since the 2008 scandal over his photographs of nude teenagers (Young 2010: 31–32).

These patterns of self-censorship suggest that as well as fostering an environment in which photographers are being targeted unlawfully for harassment and violence, anxieties about photography in public have other long-term consequences. In more sympathetic commentaries on public photography, the impact of the paranoia is often described with reference to iconic historical photographs that would not have been made or published in the current climate. Along with Nick Ut’s photograph of a young naked girl fleeing a napalm attack, which galvanized support for anti-Vietnam War movements around the world in 1972, Max Dupain’s celebrated Bondi and Newport series from the 1930s and 1950s is cited in an attempt to throw into relief the historical, political and cultural value of photographs taken in public, which may not have been made or circulated today (Anon 1998; Verghis 2005).

The potential loss of our future historical record is a major concern. The Australian documentary photographer and historian John Williams lamented the consequences of the current atmosphere of fear and suspicion, commenting on the legacy that it is leaving for future generations. The change in attitudes towards public photography raises concerns that we may leave future generations without a photographic record of life as it is lived and experienced in the early twenty-first century. As Ken Duncan noted in another interview with me, in its place we risk being left with a plethora of highly polished and staged official images. The rise of Instagram and other photo sharing websites attests to the continuing popularity of public photography worldwide amongst viewers, but it is important to also consider the long-term technological stability of these immense, ephemeral digital archives.

Much of the anxiety that has emerged around photography is embedded in the unique qualities of photography and its links to the self. As an index or direct trace of its referent, the photograph of the self is more than a likeness—it is part of oneself. This direct relationship between the photograph and its subject can leave us vulnerable to the authority of the photographer and possessor of the image. According to Christa Ludlow: “The person who controls the camera controls us. And so we are outraged to think of photographs taken without our knowledge, which may be used in perverted or humiliating ways” (2006: 149). Ludlow’s comment encapsulates the camera’s unique power to transform us simultaneously into a subject of the photograph and an object of the gaze. Photography theorists of the 1970s, 1980s and 1990s including Roland Barthes, John Tagg and Allan Sekula have explored this duality in photographic portraiture in a number of ways. To Barthes, the duality is embedded in the medium itself, and its effects are experienced all too sharply when he is photographed. Barthes describes this moment as a kind of death in which he is transformed from a subject into a lifeless, frozen object (1981: 14).

Whereas Barthes’ analysis is grounded in the ontology of photography, Tagg and Sekula focus their attention on the circulation of photographs and their links to the discursive production of the subject. They argue that photographic portraiture has been tied historically to the production of our ideal selves as self-possessive and individual. According to Tagg, the individual portrait served as “a sign whose purpose is both the description of an individual and the inscription of social identity” (1988: 41). Markers of social class and social difference were made evident in professional portraits, and helped to forge self-identity through a process of self-elaboration. In this sense, the development of photographic portraiture is intimately linked to the notion of individualism that characterizes modern capitalism and underpins the concept of privacy. As well as producing an image of a particular individual, the portrait dramatizes the larger concept of individualism and the “right” to self-definition that is so central to privacy.

This history of honorific bourgeois individualism also bears the imprint of an alternate form of portraiture that is repressive and objectifying. Sekula writes: “To the extent that the legal basis of the self lies in the model of property rights, in what has been termed ‘possessive individualism,’ every proper portrait has its lurking, objectifying inverse in the files of the police” (1986: 7). Sekula and Tagg draw on Michel Foucault’s theories of power and control to analyse the production of objectified “others” in nineteenth-century photographic practices and discourses, such as the police mug shot, and anthropometric and physiognomic studies of race, illness, criminality and insanity. Individuality and personhood are repressed in these photographs, so that the subject may come to represent certain social norms or types. Pho-

tographic subjects are thereby framed as objects of the gaze as a part of larger discourses of social regulation.

As two sides of the same coin, the honorific and repressive dimensions of photographic portraiture are latent within the medium. The extent to which one of these dimensions surfaces over the other is largely a product of the circulation and consumption of the image. Photographs of people therefore have unstable meanings, which may shift over time. This instability is evident when old family portraits come to circulate in the public realm as curiosities to be bought and sold at second-hand goods markets. The contemporary trade in vernacular photographs is large, and as the number of collectors of anonymous family portraits grows so do their prices. At flea market photography stalls, images that would have once been considered honorific portraits of “private” individuals see their personal meanings eclipsed by other “public” and commercial values. When the subject of the photograph is still alive and has borne witness to this shift across realms of consumption, stress and anxiety can result. A sense of self-possession can extend to the possession of a self-image, and when the circulation of that image occurs beyond our control, it can be experienced as a kind of theft or transgression of personal boundaries.

Much of the contemporary Australian debate about photography in public space is linked to this kind of uncontrolled circulation, rather than to the production of particularly offensive photographs. Photographs of people playing sport, enjoying the beach or children playing in a public park are not offensive images in themselves, and injury is only experienced when these images shift from an honorific context to one of potential objectification. Such photographs would not cause offence if circulated in a sporting club newsletter or amongst family and friends on Facebook. However, when published openly on the Internet they can be downloaded and recontextualized in an instant by potentially millions of anonymous viewers: their meanings shift into a threatening, unstable context.

Although the extent to which these photographs may be considered harmful is contingent upon the context in which they are consumed rather than produced, due to the speed with which photographs can move from a digital camera or camera phone to the Internet, the gap between production and circulation has been reduced almost to an instant. On the web, honorific portraits may slip into the domain of repressive, objectified images with the click of a mouse. Unable to control the circulation of the image, we are becoming increasingly anxious about the initial act of being photographed without consent.

The crucial links between privacy and self-definition are central to understanding this anxi-

ety over the use of our image. In the next chapter, "Privacy, Photography and Its Publics," I examine the close historical connections between photography and privacy, and the ways in which contemporary anxieties about supposedly diminishing levels of privacy surface inform debates about photography in public space. Simplistic notions of privacy as an inalienable right are critiqued in order to develop a more complex understanding of the culturally and historically specific character of privacy. The broader impact of photographic restrictions on experiences of public life and our future historical record is also addressed, before assessing whether the benefits of photography restrictions justify their personal, cultural and political costs.

Two of the most prominent and hotly debated issues affecting the practice of photography in public are the proliferation of surveillance technologies and rising fears about global terrorism. Daniel Palmer and Jessica Whyte's chapter, "'No Credible Photographic Interest': Photography Restrictions and Surveillance in a Time of Terror," addresses how the "War on Terror" was accompanied by rising levels of state surveillance and increased restrictions on individuals taking photographs in public. The authors draw on Azoulay's book *The Civil Contract of Photography* and her account of Giorgio Agamben's notion of the "state of exception" to analyse these and other recent restrictions of established rights. Artistic and political responses to these patterns of state surveillance and photography restrictions in Australia and the United Kingdom are also addressed in this chapter.

Whereas the threat of terrorism has been linked to a range of photography restrictions in public space in recent years, additional restrictions around the publication and exhibition of photographs have emerged in response to anxieties about the abuse of children. Alexandra Heller-Nicholas and Anne Marsh explore issues relating to controversies over the child in photography in their chapter "Bill Henson and the Polemics of the Nude Child in Photography." A series of moral panics have erupted in response to photographs of children, in which photographers have been accused of sexualizing their young models. The Bill Henson affair of May 2008 was the most significant recent case. Henson's photographs of naked adolescent models to be included in his 2008 Sydney exhibition triggered a particularly heated debate about pornography, artistic morality, paedophilia and censorship. In the ensuing furore, Henson's exhibition opening was cancelled, police raided the gallery seizing photographs and the then prime minister of Australia Kevin Rudd publicly declared the photographs "revolting." When photographs of naked children enter the public art world, they transgress the heavily policed boundary that limits the child strictly to the private domain of the home.

Feminist law historians and philosophers including Janice Richardson (2010), Jean Bethke

Elshtain (1997), Sally F. Goldfarb (2009), Anita Allen and Erin Mack (1989–90) point out how binary models that oppose public life and privacy have worked historically to keep the abuse of women and children within the “private” domestic realm. When the boundaries of privacy are policed as a family matter, domestic violence and sexual abuse are kept away from the public realms of the law and government (Landes 1998). Declaring “the personal is political,” feminists of the 1970s celebrated the challenge to this aspect of privacy. Jessica Whyte contributes to this challenge in her chapter “Criminalizing ‘Camera Fiends’: Photography Restrictions in the Age of Digital Reproduction” by considering the ways in which women and young people have been figured as victims of a perceived photographic threat. Whyte contextualizes her discussion of photographic injury within a much larger history. Drawing on Australian and American case studies from the nineteenth century to the present and Arendt’s account of the relation of the public to the private, Whyte argues that gender plays an important role in conceptions of privacy. The contemporary phenomenon of “sexting” is also considered in light of debates about pornography, privacy and the public. Whyte then offers an insightful analysis of how these debates inform concepts of photographic injury in which girls’ bodies are positioned as dangerous and criminal.

Our focus is shifted when Martyn Jolly considers the role of media culture in changing our perceptions of the face in photography. The face has long been central to the construction of individual identity in photography in western liberal democracies, as well as personal interactions in public spaces. Jolly considers how the development of new technologies, including facial recognition, surveillance and motion tracking, has had a marked impact upon these relationships between the face and identities, heightening the reification of the face and broadening the field of its circulation. The rise of celebrity culture and social media has added momentum to these changes, abstracting the face from the body and transforming it into a symbol of semiotic and commercial exchange. Jolly argues that these changes are already having an impact upon how we regard our own faces, putting pressure on our own behaviour within public spaces and our expectations for privacy. The face, according to Jolly, is shifting into a realm where the private is being rethought in terms of private property rather than a realm of discretion.

The book closes with Daniel Palmer’s more speculative discussion about the future of our relationships to the public and private realms in the era of Google Street View. Google Street View has surveyed countless public streets in thousands of cities and towns around the world since it was launched in the United States in May 2007. Using vehicles mounted with a spherical camera capable of capturing a series of 360-degree images at 30 frames per second, Street View has produced an immense archive of public photography that allows Internet

users around the world to step into the mapped locations and virtually stand on the streets. In his chapter "Google Street View and Photography in Public Space," Palmer looks at some of the ways that Street View and GPS-enabled camera phones are infiltrating social space and affecting the dynamic relationships between photography, surveillance and urban space. By critiquing a number of creative responses to Street View, Palmer considers how these increasingly participatory and automated forms of visual mediation complicate debates about photography's objectivity and subjectivity, and the ever-evolving relationships between the public and the private.

Interspersed throughout these written chapters are a series of photographs by the Australian, German and Canadian contemporary photographers Simon Terrill, Cherine Fahd, Denis Beaubois, Michael Wolf and Jon Rafman, who each add an important new dimension to these issues. Their photographs investigate a distinct yet related range of themes including the dynamics of public space, the ironies and politics of public surveillance, and the role of Google Street View in promoting a new engagement with privacy in public. Terrill has a long-standing interest in the movement of crowds in public space. In *Tilt*, he uses long exposures to record the movement of people in crowded urban spaces, and imagine new alternatives that blur the lines between the individual and the collective, and the public and the private. Rafman and Wolf use found images from Google Street View to raise other questions about the impact of new technologies on our experiences of public spaces as both direct participants and distant observers. Whether drawing attention to the ways that banal details of everyday life can be spectacularized on Street View, or selecting intriguing street scenes that hint at an unfolding gritty narrative, these artists underscore Street View's links to other modes of public photography from documentary and surveillance to cinema.

The theme of surveillance is tackled head on in Beaubois's performative body of work *In the Event of Amnesia the City will Recall*. Beaubois's contribution to this book brings together a series of photographs and stills from a video work produced in 12 public spaces in Sydney, Australia. As we watch the performer attempt to engage with the electronic eye of a surveillance camera, which peers down onto the walkways, courtyards and thoroughfares in which the performances take place, the apparent innocence of the human figure becomes far more subversive. There is also a suggestion of surveillance in Fahd's photoessay, which is based on two bodies of work, *The Sleepers* and *Trafalgar Square*, but Fahd's images ultimately operate in a different realm. By catching and isolating members of the public in private moments of quiet contemplation or slumber, Fahd reveals how bodies, faces and gestures can hint at other deeper, personal experiences and realities.

Sitting alongside rather than illustrating the chapters, these photoessays constitute chapters in their own right and as such, with only some exceptions, are not explained further in the written texts. Yet as they variously overlap with or diverge from the conclusions offered by the texts, these visual works open up an important alternate space for discussion and debate.

Together, these chapters and photographs comprehensively assess the impact of the current climate on photographers, artists, parents, children and other members of the public. By situating contemporary debates about photography in public space within a more nuanced account of the medium in its social, historical, political and creative contexts, this book seeks ultimately to diffuse anxieties about photography in public and provide an opportunity to more fully address the complex issues at hand.

REFERENCES

- Allen, A.L. and Mack, E. (1989-90), "How Privacy Got Its Gender," *Northern Illinois Law Review*, 10, pp. 441–78.
- Arendt, H. (1958), *The Human Condition: A Study Of the Central Dilemmas Facing Modern Man*, Chicago, IL: University of Chicago Press.
- Barthes, R. (1981), *Camera Lucida: Reflections of Photography* [trans. R. Howard], New York: Farrar, Strauss and Giroux.
- Berger, J. (2003), "Photographs of Agony," in L. Wells (ed.), *The Photography Reader*, London: Routledge, pp. 288–90.
- Burke, N. and McRae, S. (2005), "Blackout on Spycam Porn Technology Too Fast for Law," *Herald Sun*, 10 August.
- Eley, G. (1992), "Nations, Publics and Political Cultures: Placing Habermas in the Nineteenth Century," in C. Calhoun (ed.), *Habermas and the Public Sphere*, Cambridge: MIT Press, pp. 289–339.
- Elshtain, B. (1997), "Political Children: Reflections on Hannah Arendt's Distinction between Public and Private Life," in M.L. Shanley and U. Narayan (eds.), *Reconstructing Political Theory: Feminist Perspectives*, University Park: Pennsylvania State University Press, pp. 109–27.
- Fraser, N. (1992), "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," in *Habermas and the Public Sphere*, Calhoun, C. (ed.), Cambridge, Mass.: MIT Press, pp. 109–142.
- Goldfarb, S. F. (2000), "Violence against Women and the Persistence of Privacy," *Ohio State Law Journal*, 61: 1, pp. 1–87.
- Habermas, J. (1989/1962), *The Structural Transformation of the Public Sphere*, Cambridge, Mass.: MIT Press.
- Iveson, K. (2009), "The City Versus the Media? Mapping the Mobile Geographies of Public Address," *International Journal of Urban and Regional Research*, 33: 1, March, pp. 241–5.

- Lamont, L. (2005), "Not a Pretty Picture in This Legal Minefield," *The Sydney Morning Herald*, 30 August.
- Landes, J. B. (ed.) (1998), *Feminism, the Public and the Private*, Oxford: Oxford University Press.
- Ludlow, C. (2006), "'The Gentlest of Predations': Photography and Privacy Law," *Law Text Culture*, 10: 1, pp. 135–152.
- Mickelburgh, P. and Rose, M. (2003), "Review of Spy Phone Laws," *Herald Sun*, 12 June, 15.
- Mitchell, D. (2003), *Right to the City: Social Justice and the Fight for Public Space*, New York: Guildford Press.
- Richardson, J. (2010), "Feminism, Property in the Person and Concepts of Self," *British Journal of Politics and International Relations*, 12, pp. 56–71.
- Robbins, B. (1993), "Introduction: The Public as Phantom," in B. Robbins (ed.), *The Phantom Public Sphere*, Minneapolis: University of Minnesota Press, pp. vii–xxvi.
- Rosler, M. (2003), "In, Around, and Afterthoughts (On Documentary Photography)," in L. Wells (ed.), *The Photography Reader*, London: Routledge, pp. 261–74.
- Sekula, A. (1986), "The Body and the Archive," *October*, 39, pp. 3–64.
- Sennett, R. (1978), *The Fall of Public Man*, New York: Random House.
- Solomon-Godeau, A. (2004), "Remote Control," *Artforum International*, 42: 10, pp. 61–4.
- Sontag, S. (1977), *On Photography*, New York: Farrar, Straus and Giroux.
- (2003), *Regarding the Pain of Others*, London: Picador.
- Sorkin, M. (ed.) (1992), *Variations on a Theme Park: The New American City and the End of Public Space*, New York: Hill and Wang.
- Strong, G. (2006), "Geelong Snappers on the Watch-list," *The Age*, 18 January.
- Tagg, J. (1988), *The Burden of Representation: Essays on Photographies and Histories*, London: Macmillan.
- Thorn, G. (2005), "Peeping Toms," *Herald Sun*, 10 December.
- Verghis, S. (2005), "Shutter Shutdown," *The Sydney Morning Herald*, 26 February, 31.
- Webb, C. and Ker, P. (2006), "Libertarians Get Snappy at Photo Ban," *The Age*, 26 July.
- Young, M. (2010), "Bill Henson and the Saga of Australian Pornography Laws," *Art AsiaPacific*, 69, July/August, pp. 31–2
- Zonneveldt, M. (2002), "Teen Put on Gay Site May Lead to Camera Ban," *Herald Sun*, 3 April, 25.

NOTES

- 1 For an excellent legal manual on the laws relating to public photography in the Australian state of Victoria, produced as part of this research project, see Davison, M. and Gattineau, T., *Taking Photographs "in Public": What's Lawful and What's Not?* Available at <http://www.ccp.org.au/news.php?id=159>.
- 2 See Warner, M. (2002), *Publics and Counterpublics*, New York: Zone Books; Sheller, M. and Urry, J. (2003), "Mobile Transformations of 'Public' and 'Private' life," *Theory, Culture & Society*, 20: 3, 113.
- 3 See Iveson, K. (2007), *Publics and the City*, Malden: Blackwell, 17.

1

**STANDING ON SHIFTING
GROUND: PRIVACY AND
PHOTOGRAPHY IN PUBLIC**

—

Melissa Miles

INTRODUCTION

The fear that our privacy is under serious threat runs like a deep fissure through contemporary controversies about photography in public space, creating division between photographers and the photographed public. Uncertainties and anxieties prevail as mass media reports focus increasingly on diminishing privacy and concerns about photography in public, and calls for changes in privacy legislation and photography restrictions escalate in response. Bans on “spy phones” in public swimming pool change rooms at 110 YMCA sports and aquatic centres across the Australian state of Victoria in 2003 are amongst a raft of photography restrictions made in reaction to potential invasions of privacy in the fifteen years (Rose 2003). Concerns that mobile phone cameras may be used in change rooms also led to demands for a more widespread review of Australian privacy laws that same year (Mickelborough and Rose 2003). Similarly, when Surf Life Saving Australia proposed the prohibition of photography of its junior members on beaches without written parental permission, the restriction was couched in terms of a protection of privacy. Sean O’Connell, spokesperson for Surf Life Saving Australia, noted that “parents entrust their kids to us expecting that they will be looked after. One of the things we have to think about is their privacy” (Thorn 2005). Concerns about child protection, privacy and the banning of photography in public space overlapped and became confused, complicating the debate further still.

Although Australia does not currently have a statutory right to privacy, the popular perception that privacy is under threat has pushed this issue onto the public agenda. In July 2011, the Australian Federal Parliament invited responses from the public on the possible introduction of a statutory right to privacy (Stinson 2011). Then Minister for Privacy Brendan O’Connor described the changing climate leading to this initiative:

We know that privacy is a growing concern for everyday Australians—whether it is in our dealings with individuals, businesses, government agencies or the media ... Privacy is emerging as a defining issue of the modern era, especially as new technology provides more opportunities for communication, but also new challenges to privacy.

(Stinson 2011)

A public issues paper was subsequently introduced in September 2011 to canvas the prospect of introducing a statutory cause of action for serious invasions of privacy (O'Connor 2011). To date, no firm conclusions have been reached in response to these discussion papers. The debate nonetheless reflects an important shift in public opinion, which has for a number of years had a troubling impact upon the practice and perception of public photography in Australia and in other western liberal democracies.

In the 2005 report "Unauthorised Photographs on the Internet and Ancillary Privacy Issues," the Australian Standing Committee of Attorneys-General asked whether photography restrictions should be increased in order to protect our privacy even when we are in public. In contrast to existing laws that prohibit the production of particular types of offensive photographs in Australia in the name of privacy,¹ the focus of this Discussion Paper was whether or not we should move towards legislating the context in which photographs circulate as a means of protecting privacy, even when their content is inoffensive.

As these debates continue with no resolution in sight, they foster the climate of uncertainty and suspicion, outlined in the introduction of this book, in which photographers are frequently questioned, threatened and physically assaulted simply for using their cameras in public.² However, the longer-term concerns are for the effects that this atmosphere will have on our future recorded histories and experience of the public. In order to fully comprehend what is at stake in calls for greater photography restrictions in the name of privacy, this chapter will critique simplistic notions of privacy as a basic human right and develop a more rigorous understanding of the culturally and historically specific character of privacy. The need to remain mindful of the specific qualities of privacy law ensures that most of the case studies and examples will be drawn from the Australian context. These Australian events nonetheless reflect trends evident in other liberal democracies and thereby offer an important new perspective on international debates about privacy, photography and the public. After examining various definitions of privacy and their close ties to the historical rise of individualism and the development of new photographic technologies, the chapter will determine whether the benefits of restrictions on photography in public space outweigh their costs.

THE "RIGHT" TO PRIVACY AND PHOTOGRAPHY

Contemporary Australian debates about photography and privacy must be understood in relation to a much larger context in which the "end of privacy" is being declared with ever-more frequency and fervour. In Australia, the United States and the United Kingdom during

the last two decades, writers and social commentators have declared that our privacy is being eroded to such an extent that it may be lost completely. The *Time* magazine cover story from 25 August 1997 proclaiming the “death of privacy” is a striking example: the cover features a threatening uplit face staring at the viewer through a darkened keyhole, while the caption warns readers: “You have no secrets. At the ATM, on the Internet, even walking down the street, people are watching your every move. What can you do about it?” American writer Richard Spinello took a similarly pessimistic tone in his article “The End of Privacy” that same year, writing: “The title of this article may sound ominous, but it is intended to convey the stark reality that our personal privacy may gradually be coming to an end” (1997: 9–13). David Brin drew on more dramatic metaphors of warfare to argue that our “privacy is under siege” (1998). From the electronic distribution of personal information to receiving unwanted telephone calls from telemarketers, threats to our supposedly rapidly diminishing privacy have been identified with an array of sources.³ Photographic technologies play a prominent role in these discourses, as grievances about the challenge to privacy posed by unmanned drones, publicly mounted webcams, surveillance cameras, Google Street View and the paparazzi are raised frequently in the courts and mass media.⁴

The notion that privacy is an inalienable, self-evident right that must be protected from a series of omnipresent threats has had a significant impact upon expectations for privacy even while people are in public. In a much-cited text on privacy torts in the United States published in the *California Law Review*, Dean William L. Prosser famously stated that:

On the public street, or in any other public place, the plaintiff has no right to be alone, and it is no invasion of privacy to do no more than follow him about. Neither is it such an invasion to take his photograph in such a place, since this amounts to nothing more than making a record, not differing essentially from a full written description, of a public sight which any one person would be free to see.

(1960: 391–392)

However, more recently law commentators including Andrew McClurg (1995), Elizabeth Patton-Simpson (2000) and N. A. Moreham (2006) have challenged Prosser’s argument against privacy in public. These writers variously argue that privacy should now be extended to the public domain to take into account changing expectations of privacy and the impact of new surveillance and communications technologies.

The proliferation of surveillance technologies and the circulation of personal information have deeply informed two recent reports into privacy law in the Australian states of Victoria

and New South Wales (NSW): the Victorian Law Reform Commission's *Surveillance in Public Places: Final Report* tabled in Parliament on 12 August 2010, and the New South Wales Law Reform Commission's *Invasion of Privacy*, Report 127, also issued in 2010. Chairperson of the Victorian Law Reform Commission Professor Neil Rees reported that the proposed reforms aimed to balance the benefits of public-place surveillance, such as security and crime detection, with the need to protect people against the risks of abuse (Rees 2009). The NSW Law Reform Commission's *Invasion of Privacy* Report 127 examined the extent to which the current privacy laws in NSW effectively protect individual privacy, with the aim of simplifying the law and addressing inconsistencies to facilitate adequate enforcement of privacy legislation. Unlike the 2005 Attorney-General's report into the unauthorized use of photographs online, these reports do not address the issue of the public photography directly, but they do point to recent shifts in expectations for privacy in public that have an important impact on photography in public space.

This spotlight on privacy in public is occurring at a time when there have been other developments in privacy law in Australia. The High Court's decision in *Victoria Park Racing & Recreation Grounds Co Ltd v Taylor* (1937) is commonly cited as an authority for the argument that there is no tort of invasion of privacy in Australia. However, the High Court in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) held that there was no Australian authority that impeded the development of a tort of invasion of privacy. More recently, there have been a number of further developments in common law in which courts in Victoria and Queensland have begun to formulate and recognize a tort for invasion of privacy. In *Grosse v Purvis* (2003), the Queensland District Court awarded damages to a plaintiff who had been stalked by the defendant, recognizing "a civil action for damages based on the actionable right of an individual person to privacy." In *Doe v ABC & Ors* (2007), the County Court of Victoria found Australia's national broadcaster liable for breach of confidence and in tort for breach of privacy for naming the victim of a sexual assault on radio. These cases, along with the more recent Federal Government call for submissions on the proposed right to privacy, underscore how privacy law is developing in other fields concurrent with debate about photography, privacy and the public sphere.

The argument that we should not have an expectation of privacy in public surfaces in some aspects of the contemporary Australian debates about photography restrictions, particularly in relation to photographs of women bathing on beaches. In commenting on the arrest of Peter McKenzie, a Sydney labourer who used his mobile phone to photograph women topless on Coogee Beach, the conservative newspaper *The Australian* warns women that they should not expect privacy in public. Although the author concedes that McKenzie

“acted like a complete idiot,” the locus of blame is ultimately shifted to the women bathers: “Those who choose to disrobe in public should remember that not so long ago it was they who faced arrest. They cannot have it both ways and should not be surprised if their nakedness causes others to stare—or even snap a photo” (2004). Such arguments fail to acknowledge photography’s unique ability to intensify an invasion of privacy. There is a vast difference between being seen on a beach where we assume that we are being observed only casually and for a short time by a limited number of people, and being recorded, photographed or videotaped for the close scrutiny of a potentially vast audience. Being prepared to sun bake topless on a public beach does not equate with consent to the creation of permanent images that can be circulated and viewed repeatedly outside of their original context.

Issues of privacy in public are made more complex by claims to control over private property and the privatization of public spaces. As formerly public spaces such as shopping centres and railway stations are privatized, confusion can be created amongst photographers as to which spaces are private and which are public. One high profile case in Australia illustrates this confusion and the ways in which restrictions on photography in these privately owned public spaces are conflated in public discourse with other contemporary anxieties. Managers of Melbourne’s Southbank shopping and entertainment complex arranged for signs to be placed around the complex in 2006 prohibiting photography. The day after the signs were erected, amateur photographer and grandmother Val Moss was stopped by the centre’s security guards and asked to cease taking photographs “because of the terrorism overseas” (Webb and Ker 2006). After extensive media coverage, the then prime minister John Howard joined the debate, complaining on ABC radio that the ban was “over the top” and that the terrorist threat in Australia does not warrant a ban on photography (Anon. 2006). It is clear that in this case the threat of terrorism was used as a rationalization for the introduction of new regulations in the privately owned public space of the shopping centre. Not long after, the Melbourne Central shopping centre placed similar bans on photography on the grounds of safety, security, privacy and copyright issues (Webb and Ker 2006). Such restrictions and the manner with which they are enforced have wider implications for our experiences and expectations of privacy in public, as private security guards and private surveillance practices may not be subject to the same limits as public authorities. Increased demands for privacy in public, such as those addressed in the Victorian Law Reform Commission, *Surveillance in Public Places: Final Report*, can therefore emerge in response to these patterns of privatization of public space.

As professional Australian photographer Ken Duncan discovered in 2009 when working

at the Cairns Esplanade Lagoon, there is also a risk that fears about a loss of privacy can be co-opted and utilized for the commercial gain of others. After being accused by security guards of being a potential paedophile—despite the absence of children in the area in which he was working—Duncan was forced to stop work at the Lagoon and pay a \$665AUD fee for a one-week permit before being allowed to resume photographing. “I was told the main reason they’re doing it is to protect people’s privacy,” recalls Duncan (Chamberlain 2009). A familiar slippage between privacy and the protection of children against sexual predators is evident in official justifications of these restrictions. The then Cairns Regional Council Chief Executive Officer, Noel Briggs, noted that rules regarding permits at the Lagoon were established in 2003 to “protect the recreational users of the facilities from predatory photographic practices.” Briggs explained further: “I could get dressed up as a professional photographer and take a photo and I could be the biggest paedophile on earth—we are preventing that because we have a permit and we’re protecting the public’s interest” (Chamberlain 2009). According to Briggs’s curious logic, payment of the permit fee had the dual purpose of ensuring that the photographer is not a paedophile and that the privacy of other users of the pool is protected. Forming a particularly potent brew, existing anxieties about the loss of privacy are here mixed with other public fears about crimes against children in order to stifle debate about the limitations that the Lagoon’s management wish to place on photography and their desire to raise revenue from the practice.

This example also highlights how the perception of photographers as a threat to privacy, public security and child safety is indicative of a larger process of “othering” that pervades some aspects of privacy debates. As we aspire to protect our own privacy, we tend to deny the same respect to others because “we” are innocent and “they” are suspect. Various suspect “others” have appeared in the debates about photography restrictions, including male photographers deemed potential paedophiles, and people of foreign appearance who are labelled potential terrorists. In a climate in which carrying a camera is enough to place a person under suspicion, the conflation of other public fears with anxieties about privacy to legitimize photography restrictions will inevitably lead to further unfounded accusations against photographers working in public.

Rather than challenging these claims to a right to privacy, Australian photographers seeking to contest restrictions on their practice are countering them with assertions of other liberal rights. Such claims for photographers’ rights deeply inform the strategies of the lobby group Arts Freedom Australia (AFA), which formed in 2004. Amongst the group’s high profile activities was its organization of a rally in August 2010, in which approximately

700 photographers gathered at the Rocks in Sydney to protest against restrictions on photography in public space. Wearing t-shirts bearing the slogan “I’m a Photographer not a Criminal,” the protesting photographers demanded more respect for their rights to both freedom of movement and expression. Similar claims for photographers’ rights appear in the group’s blog. A founding member of AFA, Duncan declares:

Australia has been a signatory to the International Covenant on Civil and Political Rights since 1980 and one of the articles of the ICCPR states that everyone has the right to freedom of expression and the right to impart information and ideas of all kinds whether it’s in writing or in print, in the form of art, or through any other media.

(Rally for Concerned Photographers 2010)

Duncan’s defence of photographers’ rights to free expression fails to acknowledge how a key problem in this issue is that this right may conflict with other liberal rights, such as the right to privacy, which is similarly protected under the same covenant under Article 17. Responses from various readers of the AFA blog nonetheless reveal how profoundly this demand for photographers’ rights to free expression is felt by members.

Although this absolutist discourse of rights is seductive and a powerful means of gaining support for a cause, it ultimately risks failing to work in the interest of either photographers or defenders of privacy because it delimits the debate that is required to achieve a workable resolution. There is some cynicism around this discourse of rights. Sophie Howarth and Stephen McLaren argue in their book *Street Photography Now*, “photographers do not exist in a moral bubble and those who behave as if an unfettered right to point a camera is enshrined in the Magna Carta or the Bill of Rights do not help the delicate contemporary situation” (Howarth and McLaren 2010: 12). Instead of simply proclaiming a right to privacy and another right to freedom of photographic expression, it is important to understand the historical, cultural and political connections that bind photography, privacy and public space, and carefully consider the long-term consequences of restrictions of photography for us all.

DEFINING PRIVACY

The ease with which the term privacy is popularly invoked in these debates belies the fact that historically it has proven very difficult to define. The Australian Standing Committee of Attorneys-General report into “Unauthorised Photographs on the Internet and Ancillary Privacy Issues” acknowledges this difficulty and draws on two famous American definitions

of privacy to frame the Australian debate. The first, Samuel Warren and Louis Brandeis's notion of privacy as "the right to be let alone," was originally coined by Judge Thomas Cooley in 1888 but was popularized by Warren and Brandeis's article in *Harvard Law Review* that called upon the courts to recognize a remedy in tort for invasions to privacy (1890: 193–220). The second definition of privacy referenced in the Australian Report was Alan Westin's concept of privacy as "the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others" (2005). Westin's analysis of privacy was published in his book *Privacy and Freedom* in 1967, in which he sought to defend privacy as a means of promoting democracy, free society, enhancing personal autonomy and creating the possibility of limited and protected communication. Like Warren and Brandeis's "right to be let alone," Westin's definition is commonly cited by privacy commentators.⁵

Related to Warren and Brandeis's "right to be let alone" is the concept of privacy as "a condition of limited accessibility" (Paton-Simpson 2000: 308). A well-known contributor to this aspect of privacy discourse, Ruth Gavison, argues that privacy plays a vital role in protecting and promoting the liberty of action, mental health, autonomy, creativity and the capacity to make and foster human relations. To Gavison, anonymity is an essential component of privacy.⁶ Jeffrey Reiman similarly defines privacy in terms of access as "the condition in which other people are deprived of access to either some information about you or some experience of you" (1995: 30). Reiman challenges definitions of privacy that are based on control, arguing that they lead to anomalies in our understanding of privacy and its protection in law. Although control is important in some aspects of privacy, Reiman suggests that privacy should not be restricted to these issues: "The right to privacy is not my right to control access to me—it is my right that others be deprived of that access" (1995: 32).

The public/private dichotomy implicit in popular notions of privacy is increasingly deemed problematic as it obscures the long-standing interrelationships that bind the public and private. Writing in criticism of Hannah Arendt, Larry Peterman notes that at the end of the first book of the *Politics*, Aristotle comments that we

cannot consider the primary relationship of the family—in particular husband–wife and parent–child—without first looking from the polis, the home of the family, to the politeia, the regime that gives form to the polis and thereby to some extent the family.

(1993: 223)

Binary oppositions dividing the public and the private, whether in reference to history or to the present, risk obscuring these and other ways in which the public and private are imbricated and intermeshed.

This diversity in approaches to privacy and the public lead to the conclusion that there is no essential or intrinsic “private,” and no singular or constant factor that underpins this concept in different times and places (Baily 2002: 15). Rather than claiming an unproblematic right to privacy, it is therefore vital to understand the ways in which concepts of privacy change continually in relation to different social and historical circumstances.

PRIVACY, THE INDIVIDUAL AND PHOTOGRAPHY

Modern definitions of privacy and the desire to enshrine it in law—such as Warren and Brandeis’s argument for “the right to be let alone”—cannot be divorced from the concurrent rise of individualism and capitalism. The popular emphasis upon the right to privacy is a relatively recent development that coincided with other social and political changes including globalization, modernization and de-traditionalization. This connection pervades the literature on privacy, in which the defence of privacy is grounded explicitly in the protection of individuality and personhood, and is bound to the defence of capitalism in liberalism.⁷ In short, the concept of privacy helps liberalism shape the defence of the individual, and in doing so, privacy ideologically supports the consolidation of the power of capital (Neocleous 2002: 105).

At a biographical level, Warren and Brandeis were intimately connected to the culture of capital and individualism in modern America. Warren was a member of a socially prominent Boston family and the son-in-law of a secretary of state, while Brandeis was his law partner and a future Supreme Court justice. Their paper on privacy grew out of the concern that the “sacred precincts of private and domestic life” had to be defended against the threat of invasion from the mass media. Privacy was accordingly defined in their paper as “a distinctive property right and cultural privilege” (Osucha 2009: 72). The tone of Warren and Brandeis’s article has been criticized for giving “the strong impression of wounded gentility and an alarmist defense of traditional values” (Osucha 2009: 68). Eden Osucha refers to their clichéd description of “man’s house as his castle,” amongst other things (2009: 68).

The introduction of privatization and materialism into modern bourgeois life led to greater emphasis being placed on individuality, personal life, emotions and individual expression. This inward trend, reinforced by the development of psychoanalysis and an interest in

the unconscious, also informs the growth in demand for privacy in the twentieth century. With the rise of individuality, personal expression, new emphasis upon forms of personal interaction like friendships and intimate relationships, and new forms of commercial- and market-based publics, the private domain came to dominate social and cultural relations.

Privacy has now come to play an important role in facilitating self-definition, even when we are in public. It is what enables us to present edited versions of ourselves to different audiences, and only expose those aspects of ourselves that we want others to see. Our colleagues at work may be invited to see one side of us, while our family and friends see another (Slobogin 2002: 264). It is no coincidence that the current obsession with privacy occurs in a culture spellbound with the self-image, where everything from fashion and cooking to home improvements are marketed as an expression of our unique subjectivities, and where the proliferation of online social networking has meant that personal relationships expand in ever wider circles. The prevalence of the language of self-reliance, self-realization, self-help, self-determination, self-fulfilment and self-interestedness in contemporary culture is another important marker of this trend. While we relish in entertainments that spectacularize invasions of privacy (such as the reality television programmes, confessional TV talk shows, celebrity gossip magazines and voyeuristic websites), we demand more and more privacy for ourselves. Far from ending privacy, these technologies and entertainments are increasing our appetites for it.

This culture of individualism and privacy is seductive, and underpins defences of the continuing legitimacy of personal privacy as “central to dignity and individuality” (Anon. 1998: 1087). However, its dominance also has important implications for our ability to engage actively and critically in the public sphere. The key ethical position of liberalism is that “the private has a moral and political priority over a public sphere, which itself can only be constructed from individuals in voluntary association” (Bailey 2002: 24). In seeking to defend privacy as a means of protecting individualism, we retreat into individual worlds where our ability to challenge the state as a collective and generate more meaningful political and social change is delimited.

Problematically, defences of street photography often reinforce this discourse of individualism and self-possessive expression. In texts such as Colin Westerbeck and Joel Meyero-witz’s *Bystander: A History of Street Photography* (1994), street photography is framed in terms of the individual photographer’s unique vision or signature style—their particular way of seeing that provides insight into “the human condition.” In the process, notions of shared public life that the photographs may express are reframed by discourses of indi-

viduality and authorship. Comparable defences of photographers take place in the press. Supporters of the Australian photographer Rex Dupain invoke his famous father, the modernist photographer Max Dupain, to declare his special authority as a photographer of public life. Rex Dupain is no stranger to photography restrictions. In 2005, he was forced to cancel a shoot at a Sydney eastern suburbs surf club because the club had forgotten to tell parents that he was coming and some parents became extremely aggressive, waiving a crucifix and shouting abuse (Verghis 2005). In another instance, police questioned Dupain for 25 minutes while taking pictures for his new book *The Colour of Bondi* at Bondi Beach. At this time, the photographer had his camera confiscated even though he was not breaking any laws.⁸ By defending Dupain's rights to photograph with claims to his special vision as an artistic photographer, debate remains fixed in the existing paradigm of individuality and self-possession that underpins anxieties about photography, privacy and public space in the first place.

THE CAMERA, THE SELF AND PRIVACY

Modern expectations for privacy not only coincided with the rise of capitalism and individualism, they arose with the development and proliferation of photography, and had a powerful impact on the ways in which we use and comprehend photographs of ourselves. The centrality of personal autonomy and individualism in privacy discourse is reflected in the growing perception of our self-image as our property. Photography restrictions and debates surrounding controversial events respond to a perceived violation of privacy, but they also reinforce the notion that our image is our property, something to be owned and a fragment of our very individuality that must be protected. A problematic slippage therefore may occur in public perceptions of privacy and its cultural links with individualism. This slippage is marked by a conflation of the right to privacy with rights of publicity, or the rights to own and market one's image as property. The conception of the self-image as personal property is made evident in lawsuits in which the paparazzi are taken to task over the unauthorized use of celebrity images. When consumer culture encourages more and more of us to conceive of our own image as a commodity or brand—even when it is not circulating as one—we may similarly seek to control the terms of its circulation.

Despite the prevalence of concerns over self-image today, such links between the camera, the self and privacy are certainly not recent phenomena. Warren and Brandeis's calls for greater legal protection of privacy emerged in direct response to fears that "instantaneous photographs and newspaper enterprise" would invade the domestic sphere, and the belief that "the sacred precincts of private and domestic life" had to be defended against this

threat (Warren and Brandeis 1890: 195). The authors argued that legal defence against the media was required “to protect the privacy of the individual from invasion either by the too enterprising press, the photographers, or the possessor of any other modern device for recording or reproducing scenes or sounds” (Warren and Brandeis 1890: 206). Existing concepts of individual autonomy and personal injury were accordingly extended in Warren and Brandeis’s article, as the proliferation of cameras and the potential use of photographs in the media posed new threats to privacy.

The explosion of digital technologies and the ease with which digital photographs circulate online has shifted the parameters of this issue. At the heart of anxiety about photography and privacy today is concern over what Helen Nissenbaum refers to as “contextual integrity” (1998). Nissenbaum’s model of contextual integrity is put forward as a means of theorizing the possibility of privacy in public space, and relies on the idea that our sense of privacy is contingent upon particular contexts, circumstances and situations. For example, a pharmacy may be open to the public, but we would consider it a breach of privacy if our request for a particular drug or ointment was recorded and publicly broadcast. We have a socially agreed upon set of norms that determine acceptable uses of private information in different public contexts. Where these norms are respected, contextual integrity is maintained; and where they are violated, contextual integrity has been breached (Nissenbaum 1998: 582).

On the surface, it seems as though photography’s capacity for contextual mobility would place it fundamentally at odds with this notion of privacy as contextual integrity. Regardless of whether it is digital or analogue, or taken by an artist, a photojournalist or an amateur, the act of taking a photograph involves cutting a moment out of its own temporal and spatial context and placing it new ones. This power of photography is encapsulated in the description of the camera’s shutter as a “miniature guillotine” that slices an image from the world and places it in an unfamiliar context (Solomon-Godeau 2004: 61).

The issue of consent has been put forward as a potential remedy to the invasion of privacy that this movement between and across public and private contexts can cause (“Unauthorized Photographs on the Internet and Ancillary Privacy Issues” 2005). However, demands for consent would have a fatal impact on the spontaneity that is so central to street photography and photojournalism. Rex Dupain comments bluntly, “If you ask permission, you get either a ‘no’ or a contrived image” (Clark 2009). The value of street photography and photojournalism is that they operate in “the borderland between intrusion and observation” (O’Hagen 2010). Moreover, it would be impractical to seek the permission of

everyone who appears in a photograph taken in public. We can rarely clear public space in order to focus on our subject and our subject alone, and very often people may appear in a photograph simply because they share the same space as the intended subject. The messy legal ramifications of an insistence upon consent can be witnessed in France where photographers are legally obliged to gain permission of all people in a group photograph before its publication.⁹

My reason for underscoring photography's contextual mobility within a discussion of privacy as contextual integrity is not to propose that we protect privacy by clamping down on photography's dynamism and further regulating the production and circulation of photographs. Peter Coroneos, CEO of the Internet Industry Association, is amongst the many commentators to point out that if the test of photographic publication becomes contextual, laws will be extremely difficult to administer (Lamont 2005). Nissenbaum's model is of interest precisely for the reasons that make it difficult to administer in law. Rather than presenting privacy as a kind of solid, self-evident fort that must be protected against "invasion," Nissenbaum's notion of privacy emphasizes how breaches of contextual integrity are inextricably linked to social conventions and norms. Like the right to privacy, these norms are the product of context, are established socially and culturally, and are therefore always subject to change.

Contextual integrity operates at the boundaries through which social norms are defined, and photography's contextual mobility makes visible the fluid and contingent qualities of these boundaries. An analysis of the paranoia surrounding photographs of children and families in public places in terms of breaches in contextual integrity would, for example, encourage us to investigate the social boundaries that are being policed through these calls for photographic restrictions. If we start accepting photography's contextual mobility and acknowledge that privacy and contextual integrity are intimately tied to the construction of certain social norms and values, debate can be shifted away from the technological determinism and "othering" of photographers that have dominated media coverage, and towards an assessment of the impact of restrictions on photography on privacy and the public.

PHOTOGRAPHY AND ITS PUBLICS

As the effects of anxieties about privacy and photography in public space extend well beyond the limits of the photograph's frame, the fate of public photography cannot be assessed in isolation from a broader consideration of the changing nature of public space, and our sense of ourselves as members of a public. It is critical to acknowledge how anx-

ieties about photography in public are not only having an impact on our future historical record, but are affecting contemporary life, here and now. In the words of the Communications and Journalism lecturer Paul Frosh, photography can be understood usefully as “both the index and agent of publicness itself” (Frosh 2001: 43). Photography has become fundamental to social and public life. Its power to make visible is central to the ways we structure, negotiate and experience the public and the private in a society “where publicness and visibility are closely interwoven” (Frosh 2001: 46). Seen from this perspective, restrictions on photography in public space seem to signal larger shifts in our sense of shared public life in an era of privatization.

Anxieties about photography in public reflect and reinforce our larger withdrawal from the public realm as a shared social space. As street photography is circulating in ever more limited fields, we rarely have the opportunity to see images of each other in public space and witness how they dramatize larger social phenomenon such as notions of community, belonging and shared public life. While exhibitions of early and mid-twentieth century social documentary and street photography—such as “Candid Camera: Australian Photography 1950s–1970s” (Art Gallery of South Australia, 2010) or “Exposed—Voyeurism, Surveillance and the Camera” (Tate Gallery, London, 2010)—attract large crowds, contemporary street photography is rarely shown in mainstream galleries. Today, the fear of lawsuits means that news footage and photographs taken in public spaces are more likely to be of anonymous people, shot from behind and faceless, than clear images of others’ faces. This process of obscuring the faces of those with whom we share public space may protect their privacy, but it is also a dehumanizing gesture that drastically delimits our opportunities for mutual recognition and identification. The experience of looking into the eyes of people in historical photographs and seeing ourselves is a powerful reminder of how photographs have a special ability to generate a sense of recognition with others in a manner that transcends time and space.

Rather than being willing participants in this social exchange or seeing ourselves as members of a public with shared responsibilities and obligations, the culture of individualism that underpins the fetishization of privacy encourages us to conceive of ourselves as individuals, perpetually vulnerable to perceived threats against our personhood. Lacking a sense of shared public life, we retreat further into our private domains and treat anyone who attempts to intrude on that domain with suspicion. Alastair Hannay paints a grim view of the state of contemporary public life:

Being private is what people want positively to be. Whatever interest there is in public life is more than satisfied by what is relayed to them in their homes ... Public space, both physical and abstract, is a playground to which it can escape but is in reality no more than an extension of its private sphere; the forms of fulfillment it offers have nothing evidently to do with collective expressions of humanity. In the forum or elsewhere, once in the great outdoors private citizens remain essentially private.

(2005: 78)

In commenting on the impact of this climate in an interview with me, Melbourne-based photographer Ponch Hawkes refers to the sense of paranoia that is fostered in the media, noting: "crime figures are down but the news cycle is up." Throughout her career, Hawkes has produced a number of photographic series about communities, families and friendships, and is concerned that the distorted perception of risk in contemporary society is creating an atmosphere of fear and alienation. The speed of global media ensures that we are made all too aware of crimes and traumatic events that occur well beyond our doorsteps. When we transform ourselves psychologically into potential victims of crime, it is a small imaginative leap to see a stranger with a camera as a threat against which we must be protected. "Nothing is more hopeless than a scared society," states photographer John Williams in another interview with me, in response to this concerning turn. Rather than being eager to be a part of the photographic record of public life, when photographed in public this climate encourages us to feel like victims of an unnamed abuse or harm, all the while acquiescing to increased official public surveillance.

These changes are occurring in a context in which our relation to the public, like the private, is shifting. Traditional realms for participation in public life, such as through political parties and local, state and federal government, are playing a less important role in an era of globalization and multinational organizations where the political management of major problems now frequently takes place. The media reminds us continually of the failings of politicians and our powerlessness in the face of multinational corporations, while globalization and technological development are presented as so vast and fast moving that they are beyond our control. It is not surprising that so many are pessimistic about the public realm today. According to Bailey, the private is "asserting itself in the vacuum created by this public failure" (2002: 28).

In response to these constrictions on public life, photographers and their supporters around the world are forming various "counterpublics" in which to assert their presence. Nancy Fraser defines counterpublics as "parallel discursive arenas where members of sub-

ordinated social groups invent and circulate counterdiscourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and needs" (1997: 80). Photographers have found numerous means of bringing themselves and their messages into the public sphere, despite the restrictions. Arts Freedom Australia was formed by a small group of photographers and has many individual members. Originally, the group was organized in response to a desire for clarity over the often-contradictory laws that restrict commercial and professional photography in sites such as beaches and national parks. However, today the concerns of members extend much further, and posts on the group's blog describe instances of harassment directed at people simply wanting to photograph their own families in public places or pursue their hobby of street photography. Contributors to the AFA blog speak of defying bans on photography in certain public spaces and refusing to be intimidated when harassed by members of the public who become suspicious at the sight of their camera.

Similar bodies have been active in the United Kingdom. The *British Journal of Photography* joined the cause in 2009, launching its "Not a Crime" campaign. The "Not a Crime" Facebook page noted that the project developed in response to "increasing concerns about terrorism, paedophilia, health and safety, personal privacy and plain old paranoia about pretty much anything Her Majesty's subjects get up to [which] has resulted in a deep mistrust of photographers."¹⁰ The campaign invited photographers to post a self-portrait together with a sheet of white card that proclaimed "Not a crime" or "I am not a terrorist" to its Flickr group. These slogans became prominent in the streets of London in January 2010 when a group called "I'm a photographer, not a terrorist" rallied approximately two thousand photographers, many carrying these signs, in Trafalgar Square to protest against police harassment.

The London Street Photography Festival and online forums such as the Flickr site "Hardcore Street Photography" combat negative perceptions of photography in public by stressing the social and cultural value of street photography. The 62,600 members (and climbing) of this international Flickr group suggest that an interest in the genre persists despite anxieties about privacy. If Paul Virilio is right and the screen has become the new village square, these online sites of resistance may prove productive. Although we should not look to the Internet to replace traditional forms of public space and interpersonal interaction, these alternative realms do make possible different forms of public action for photographers, and provide a means of reaching a large audience across a broad geographical area.

CONCLUSION

As the term “privacy” is used as a catch cry to support a variety of restrictions of photography in public, it is important to question the assumptions and meanings with which it is being invested. Far from being an essential or universal right, privacy is bound to neo-liberal discourses of individualism, and its modern development coincided historically with the growth of photography as a potent means of self-definition. Other more recent changes in privacy discourse, such as the privatization of public space and the proliferation of new digital and surveillance technologies, also play a significant role in shifting perceptions and experiences of privacy in public. While generalized claims for rights to privacy and freedom of expression are very easily made on either side of the photography restriction debate, when balancing the rights and social responsibilities of photographers with those of other members of the public we must not lose sight of the contingency of privacy. At issue is not simply a matter of a choice between right and wrong or good and evil, as those who attempt to couch photography restrictions in terms of child protection or terrorism prevention would have us believe. Instead, we are faced with conflicts between a series of rights or goods: a desire for self-definition, the need to maintain a healthy public life and the importance of leaving a historical record for future generations.

As these debates continue, we must also question whether the perceived threat to privacy posed by photography in public space can be obviated without further restrictions on photographers, and consider the extent to which such restrictions would actually achieve the goal of protecting privacy. Existing Australian laws have been designed to protect people against photographs taken in public that are offensive, defamatory, misleading or deceptive. It is difficult to see how further restrictions on photography can enhance our privacy. In contrast, additional photography restrictions will have the primary effect of further regulating public space and placing us under further surveillance and scrutiny. Rather than protecting us from harm, such photography restrictions risk enhancing the emphasis upon individualism that underpins anxieties about privacy and encouraging us to see ourselves as victims of an array of imagined public harms. At stake is not only the personal safety of photographers, both amateur and professional, who are threatened for using their cameras in public, but our future historical record, our sense of belonging to a larger public and the sense of well-being, shared responsibility and security that it brings.

REFERENCES

- Anon. (1998), "Privacy, Photography, and the Press," *Harvard Law Review*, 111: 4, pp. 1086–103.
- Bailey, J. (2002), "From Public to Private: The Development of the Concept of the 'Private'," *Social Research*, 69: 1, pp. 15–31.
- Brin, D. (1998), *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* Reading, New York, NY: Perseus Books.
- Chamberlin, T. (2009), "Council Told to Snap Out of It," *The Cairns Post*, 4 March.
- Clark, A. (2005), "These Photos May Be Illegal," *The Sydney Morning Herald*, 16 November.
- Fraser, N. (1987), *Justice Interruptions: Critical Reflections on the "Postsocialist" Condition*, London: Routledge.
- Frosh, P. (2001), "The Public Eye and the Citizen-Voyeur: Photography as a Performance of Power," *Social Semiotics*, 11: 1, pp. 43–59.
- Hannay, A. (2005), *On the Public*, London: Routledge.
- Howarth, S. and McLaren, S. (2010), "Stare, Pry, Listen, Eavesdrop," *Street Photography Now*, London: Thames and Hudson.
- Lamont, L. (2005), "Not a Pretty Picture in This Legal Minefield," *The Sydney Morning Herald*, 30 August.
- McClurg, A. J. (1995), "Bringing Privacy Law out of the Closet: A Tort Theory of Liability for Intrusions in Public Places," *North Carolina Law Review*, 73, pp. 989–1088.
- McLeod, C. (1999), "When Privacy Laws Undermine Democracy," *Privacy Law and Policy Reporter*, 6: 2, p. 16.
- Mickelborough, P. and Rose, M. (2003), "Review of Spy Phone Laws," *Herald Sun*, 12 June, p. 15.
- Moreham, N. A. (2006), "Privacy in Public Spaces," *Cambridge Law Journal*, 65: 3, pp. 606–635.
- Neocleous, M. (2002), "Privacy, Secrecy, Idiocy," *Social Research*, 69: 1, pp. 85–110.
- Nissenbaum, H. (1998), "Protecting Privacy in an Information Age: The Problem of Privacy in Public," *Law and Philosophy* 17: 5–6, pp. 559–596.
- NSW Law Reform Commission Report (2010), *Protecting Privacy in New South Wales* 127. http://www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_r127chap01.
- O'Connor, B. (2011), "A Commonwealth Statutory Cause of Action for Serious Invasion of Privacy," Issues Paper, The Minister for Privacy and Freedom of Information, 23 September. <http://www.dpmc.gov.au/privacy/causeofaction/>.
- O'Hagan, S. (2010), "Why Street Photography Is Facing a Moment of Truth," *The Observer*, 18 April.
- Osucha, E. (2009), "The Whiteness of Privacy: Race, Media, Law," *Camera Obscura*, 24: 1, pp. 67–106.
- Paton-Simpson, E. (2000), "Privacy and the Reasonable Paranoid: The Protection of Privacy in Public Places," *University of Toronto Law Journal*, 50: 3, pp. 305–346.
- Peterman, L. (1993), "Privacy's Background," *The Review of Politics*, 55: 2, pp. 217–246.
- Prosser, W. L. (1960), "Privacy," *California Law Review*, 48: 3, pp. 391–392.
- "Putting up Shutters on Mobile Phones," (2004) *The Australian*, 3 December.
- "Rally for Concerned Photographers," (2010) *Arts Freedom Australia* Blog, 21 April, <http://www.artsfreedom.org.au/>

maustralia.com/blog/?p=99.

- Rees, N. (2009), *Surveillance in Public Places: Final Report*, Victorian Law Reform Commission, 30 March.
- Reiman, J. H. (1995), "Driving to the Panopticon: A Philosophical Exploration of the Risks to Privacy Posed by the Highway Technology of the Future," *Computer and High Technology Law Journal*, 11, pp. 27–44.
- Rose, M. (2003), "Pools Outlaw Mobile Phone Amid Privacy Fears," *Herald Sun*, 11 June.
- Rubinfeld, J. (2008), "The End of Privacy," *Stanford Law Review*, 61: 1, pp. 101–162.
- Slobogin, C. (2002), "Public Privacy: Camera Surveillance of Public Places and the Right to Anonymity," *Mississippi Law Journal*, 72, pp. 213, 237–267.
- Solomon-Godeau, A. (2004), "Remote Control," *Artforum International*, 42: 10, pp. 61–64.
- Solove, D. J. (2008), "The End of Privacy?" *Scientific American*, 299: 3, pp. 100–106.
- "Southgate Photo Ban 'Over the Top'" (2006), *The Age*, 25 July.
- Spinello, R. (1997), "The End of Privacy," *America*, 4 January, pp. 9–13.
- Standing Committee of Attorneys-General (2005), "Unauthorized Photographs on the Internet and Ancillary Privacy Issues," Attorneys-General Department, Canberra, Australian Government.
- Stinson, J. (2011), "A Right to Privacy in Australia," Office of the Minister for Home Affairs, Minister for Justice, Minister for Privacy and Freedom of Information, the Hon Brendan O'Connor, Media Release, 21 July. http://www.ag.gov.au/www/ministers/oconnor.nsf/Page/MediaReleases_2011_ThirdQuarter_21July2011-ArighttoprivacyinAustralia.
- Sykes, C. J. (2000), *The End of Privacy: The Attack on Personal Rights at Home, at Work, On-Line, and in Court*, New York: St. Martin's Press.
- Thorn, G. (2005), "Peeping Toms," *Herald Sun*, 10 December.
- Verghis, S. (2005), "Shutter Shutdown," *The Sydney Morning Herald*, 26 February, p. 31.
- Victorian Law Reform Commission (2010), *Surveillance in Public Places: Final Report*, 12 August. <http://www.lawreform.vic.gov.au/wps/wcm/connect/justlib/Law+Reform/Home/Completed+Projects/Surveillance+in+Public+Places/LAWREFORM+-+Surveillance+in+Public+Places+-+final+report>.
- Warren, S. D. and Brandeis, L. D. (1890), "The Right to Privacy," *Harvard Law Review*, 4, pp. 193–220.
- Webb, C. and Ker, P. (2006), "Libertarians Get Snappy at Photo Ban," *The Age*, 26 July.
- Westerbeck, C. and Meyerowitz, J. (1994), *Bystander: A History of Street Photography*, London: Thames and Hudson.
- Westin, A. F. (1967), *Privacy and Freedom*, New York: Atheneum.
- Whitaker, R. (1999), *The End of Privacy: How Total Surveillance is Becoming a Reality*, New York: New Press.

NOTES

- 1 In Victoria, it is an offence to take photographs of a "private activity" without the consent of the subjects. New South Wales has introduced laws against "filming for indecent purposes," which make it an offence to photograph someone "in a state of undress, engaged in a 'private act' or in circumstances

where a reasonable person would expect privacy." South Australian child pornography legislation stipulates that "a person who acting for a prurient purpose makes a photographic, electronic or other record from which the image, or images, of a child engaged in a private act may be reproduced, is guilty of an offence." See Standing Committee of Attorneys-General, "Unauthorized Photographs on the Internet and Ancillary Privacy Issues," 16–17.

- 2 Online survey conducted as part of the "Photography and Crime" research project, Monash University, 2010–2011. Chief Investigators: Anne Marsh, Daniel Palmer, Melissa Miles and Mark Davison.
- 3 See Solove, D. J. (2008), "The End of Privacy?," *Scientific American*, 299: 3, pp. 100–106; Rubinfeld, J. (2008), "The End of Privacy," *Stanford Law Review*, 61: 1, pp. 101–162; Whitaker, R. (1999), *The End of Privacy: How Total Surveillance is Becoming a Reality*, New York: New Press; Sykes, C. J. (2000), *The End of Privacy: The Attack on Personal Rights at Home, at Work, On-Line, and in Court*, New York: St. Martin's Press.
- 4 See Miles, M. (2013), "Privacy in Google Street: webcams, Street View and the Transformation of Photography and Privacy in Public," in P. Wombell (ed.), *Drone: The Automated Image / Drone : l'image automatisée*, Montréal: Le Mois de la Photo à Montréal, 174–182.
- 5 See McClurg, A. J. (1994-5), "Bringing Privacy Law out of the Closet: A Tort Theory of Liability for Intrusions in Public Places," *North Carolina Law Review*, 73, 1029; Nissenbaum, H. (1998), "Protecting Privacy in an Information Age: The Problem of Privacy in Public," *Law and Philosophy*, 17: 5/6, p. 591.
- 6 See Nissenbaum (1998); Gavison, R. (1980), "Privacy and the Limits of the Law," *The Yale Law Journal*, 89: 3, pp. 421–471.
- 7 See, for example, Anon. (1998), "Privacy, Photography, and the Press," *Harvard Law Review*, 111: 4, p. 1087; Abercrobie, N., Hill, S. and Turner, B. (1986), *Sovereign Individuals of Capitalism*, London: Allen & Unwin, p. 36; Mensel, R. E. (1991), "'Kodakers Lying in Wait': Amateur Photography and the Right to Privacy in New York, 1885–1915," *American Quarterly*, 43: 1, pp. 26–27; Slobogin, C. (2002), "Public Privacy: Camera Surveillance of Public Places and the Right to Anonymity," *Mississippi Law Journal*, 72, p. 264.
- 8 See McNicoll, D. (2006), "Dupain Beach Snap Draws Police Focus," *The Australian*, 9 December; Cvoró, U. (2007), "Perverts on the Beach," *Broadsheet*, 36: 1, pp. 22–24.
- 9 See McLeod, C. (1999), "When Privacy Laws Undermine Democracy," *Privacy Law and Policy Reporter*, 6: 2.
- 10 See The "Not a Crime," Facebook page: <http://www.facebook.com/group.php?gid=244699105380>.

2

TILT

—

Simon Terrill



PAGE 45

—

Simon Terrill, *Bank Junction*, 70 x 85cm (image size 60x60cm), type C print, 2013. Courtesy of Sutton Gallery, Melbourne (Australia).

PAGE 47

—

Simon Terrill, *Tilt*, 110 x 110cm, type C print, 2013. Courtesy of Sutton Gallery, Melbourne (Australia).





PAGE 48

—

Simon Terrill, *Hall of Mirrors*, 110 x 110cm, type C print, 2013.

Courtesy of Sutton Gallery, Melbourne (Australia)

PAGE 51

—

Simon Terrill, *Carnival*, 70 x 85cm (image size 60x60cm), type C
print, 2013. Courtesy of Sutton Gallery, Melbourne (Australia).





PAGE 52

—

Simon Terrill, *Rise*, 110 x 110cm, type C print, 2013.

Courtesy of Sutton Gallery, Melbourne (Australia).

PAGE 55

—

Simon Terrill, *Barrio*, 180 x 240cm, type C print, 2013.

Courtesy of Sutton Gallery, Melbourne (Australia).



**"NO CREDIBLE PHOTOGRAPHIC
INTEREST": PHOTOGRAPHY
RESTRICTIONS AND SURVEILLANCE
IN A TIME OF TERROR**

—

Daniel Palmer and
Jessica Whyte

In the years since the 9/11 terror attacks, photographers have been treated with increasing suspicion when taking photographs in public spaces. As we are warned to “be alert, but not alarmed,” as a well-known Australian television campaign put it in the wake of the terrorist acts, security campaigns also ask us to report those taking photographs that appear “unusual” or are of “subjects which have no credible photographic interest.” This latter, memorable phrase appears in a document published in 2010 by the Western Australian Government’s “Office of State Security and Emergency Coordination,” titled “Should I Report It? An Easy Checklist for Owners and Operators of Facilities to Identify Suspicious Behaviour” (www.ossec.dpc.wa.gov.au).

In this new climate, photographers have found themselves harassed and threatened with terror-related charges for taking photographs in public, or seemingly public, places. In a high profile case at Melbourne’s Southgate complex in 2006 cited earlier in this book, an amateur photographer (and grandmother) was stopped by security guards and told to stop taking photos “because of the terrorism overseas” (Egan 2006). In Britain, the media have reported various incidents involving both amateur and professional photographers who have been stopped and searched by security guards and police while photographing such things as buildings and tourist landmarks. As new laws have been introduced that directly or indirectly attempt to curb photography, both the National Union of Journalists and the British Press Photographers’ Association have expressed their concerns about the threat to press freedom, and photographers’ groups in the United Kingdom have staged protest flash mobs, in which photographers have descended en masse to take photos in front of places like New Scotland Yard.

This chapter¹ considers these developments in light of Ariella Azoulay’s theorization of what she terms the “civil contract of photography”—that is, the possibility for non-state civic interaction allowed by the invention of the camera (Azoulay 2008). Azoulay’s work offers a marked departure from theorizations of photography that have tended to stress its social control function, such as those that find their point of departure in Michel Foucault’s treatment of Jeremy Bentham’s panopticon as a paradigmatic space of a disciplinary society. Like Foucault, Azoulay is concerned with the relation between visibility and modes of government, but while his work tends to focus on the disciplinary effects of panoptical surveillance, she is more interested in the civic potential she sees enabled by the photo-

graphic apparatus. Photography is a relation between formally equal parties, whose equality lies in their shared participation in what, following Foucault, she terms the community of “the governed” (Azoulay 2008: 17). Azoulay’s book was drafted during the second Palestinian intifada, and she portrays it as her attempt to think through her position as a spectator “addressed everyday by photographs documenting the daily horrors of the Israeli occupation” (Azoulay 2008: 88). Rather than characterizing our response to images of conflict and horror in the psychological framework of empathy, she argues that the photograph should be viewed as a political claim to which we have a civic duty to respond. The photographic relation allows the rehabilitation of the citizenship of those who have been stripped of it and allows for a form of political community that is not mediated by the state:

In an era when speaking in terms of the res publica is becoming more and more rare, photography is one remaining site, a place of refuge, from which the discourse on the res publica may be revived.

(Azoulay 2008: 32)

Photography is one of the ways in which we are able to establish a distance from power and observe its actions from a position that is not already marked as one of subjection.

The Civil Contract of Photography focuses on the potential for political praxis fostered by the circulation of images of conflict and state violence, and its premise is that both the capture and the circulation of images are able to occur relatively freely. “There are virtually no restrictions on the use of photography in public space. Everyone and everything is liable to become a photograph” (Azoulay 2008: 146). The assumption that photography is a largely unrestricted practice that “organizes social relations without the mediation of the sovereign” is difficult to sustain, however, in the post-9/11 climate of anxiety (Azoulay 2008: 110). Indeed, in recent years the proliferation of photographic apparatuses and the ease of distribution enabled by the Internet have generated pervasive anxieties about photography in public space, leading to a host of new photography restrictions. While there are numerous rationales for such restrictions, some premised on threats to privacy, others on the protection of children for instance, this chapter specifically considers those photography restrictions that have been introduced ostensibly to prevent terrorism in the wake of 9/11. Whilst Azoulay briefly considers attempts to restrict photography, she suggests that the “ban on photography is still exceptional in the Western world” (Azoulay 2008: 518), and that, with “few exceptions, the mass production of images takes place unabated” (Azoulay 2008: 113). Here it is worthwhile asking after the status of these exceptions. After all, as Azoulay is well aware, ours is a time in which the exception takes on a crucial political importance.

Relying on Giorgio Agamben's critical re-reading of Carl Schmitt's theory of the state of exception (1998), Azoulay's work interrogates the status of exceptionality, both as it is applied to disaster and conflict zones and as it serves to exclude certain people from the normal realm of citizenship. By identifying the way in which those who are excluded from state citizenship are cast into an exceptional zone, and reproduced, in Agamben's terms, as "bare life" deprived of legal status, Azoulay presents the civil contract of photography as a demand for the rehabilitation of a non-state civil status. Thus, the attempt by the state to restrict photography has crucial political ramifications. As a key example of its efficacy she cites an Israeli operation in Gaza led by Ariel Sharon in the early 1970s, of which no photographs appear to exist. Such restrictions "are usually local prohibitions relative to the declaration of a state of emergency—a state of exception" (Azoulay 2008: 114). Azoulay's account of the state of exception is important for her theorization of the status of those who are excluded from the citizenship of the nation state but who are also rehabilitated by the social contract of photography. Yet while she relies on Agamben's account of the way certain people are excluded from the protection of the nation state and abandoned in a zone of exception, deprived of civic status, she does not consider his insight that the state of exception is no longer confined to determinate spatio-temporal boundaries and has instead become the norm. This insight is particularly suited to understanding post-9/11 restrictions on photography that can no longer be viewed as either temporally or geographically demarcated. Rather, we are faced with a series of exceptional measures that serve to cast photography itself as a potential emergency that demands state intervention. It is thus worth asking about the transformation of the photographic relation itself that may be taking place as a result of the generalization of such "exceptions."

This chapter seeks to address the following question: if restrictions on photography in public space are no longer the exception but the rule, what impact does this have on photography's contribution to the constitution of a civic sphere not mediated by the state? Such a question becomes more urgent if we consider that the attempt to restrict photography under the guise of preventing terrorism exists alongside the massive extension and intensification of state and private surveillance (Lyon 2003). Even as photographers are harassed and threatened for taking photographs of state personnel, "security" cameras provide a near continuous record of our public lives. Britain notoriously boasts more than four million CCTV cameras in public places, roughly one for every 14 inhabitants (Wacks 2010: 10). In this chapter we bring Foucault's insights about the disciplinary function of surveillance together with Agamben's theorization of the normalization of the state of exception in order to better understand the convergence of state surveillance and the restriction of established rights, including the right to take photographs, in the context of the War

on Terror. Our focus is on the consequences of this convergence of state surveillance and photography restrictions for the photographic relation itself.

In what follows, we consider the possibility that restrictions on photography in public space are aspects of an attempt to monopolize the power to create images, and thereby to re-consolidate the “civil contract of photography” in statist terms. By stressing the capacity of photography to circulate political claims across borders, Azoulay provides an important counterweight to the idea of photography as simply a tool of domination and control. Nonetheless, through a reflection on War on Terror photography restrictions and surveillance, we suggest that we need to understand the photographic relation as a locus of tension between these two poles. The relative balance between the control function and the “civic” function, to use Azoulay’s term, is always a product of a form of contestation. While we trace the way the state has attempted to consolidate the control function of photography at the expense of its civic function, we therefore also examine a number of artistic and political responses that have aimed both to draw attention to surveillance and to challenge restrictions on photography in public space. In Denis Beaubois’ video installations that highlight the extent to which we are subjected to anonymous surveillance (see his photo-essay in [Chapter 8](#)) and the flash mobs and organized demonstrations by UK group “I’m a photographer not a terrorist,” we identify attempts to resist the state monopolization of the photographic gaze.

PHOTOGRAPHY AND ANXIETY: SURVEILLANCE AND CONTROL

The history of photography, Azoulay notes, has often been written as a history of the technical apparatus. Instead, she frames the invention of photography as occurring at the moment in which diverse people begin to use this apparatus to produce images of their encounters. “Photography was invented at the moment when a space of plurality was initiated” and people began producing images of those outside their immediate circle of acquaintances (Azoulay 2008: 93). If we are to re-conceptualize the history of photography as the history of a social relation, then we must be attentive to both the anxieties generated by the proliferation of images and the attempts by the state to order this new space of plurality. Photographers have been subject to suspicion at various times in the past. For instance, when amateur photography began to flourish following the Kodak revolution in the 1880s, article after article described the anxiety engendered by roving photographers—“that rapidly increasing class of persons known as amateur instantaneous photograph cranks”—who threatened to make a permanent record of any instant (Mnookin

1998: 14). In part, this anxiety emerged because the then new photographic technologies that involved smaller, more portable cameras and faster film had made it possible for a photograph to be taken without the subject's knowledge. Writers in the *Glasgow Herald* in 1891 complained of "the disgraceful attitude of photographing anyone against his will," and the 1898 *British Journal of Photography* moaned of "the hand-camera fiends who 'snap-shot' ladies" (Batchen 2002: 451). But the unease was also a product of the democratization of photography. The "photographic medium," in Jacques Rancière's words, "participated in the construction of a sensible world where men of the age of the masses could affirm their existence as both possible subjects of art and experts in its use" (2009: 8). In response, the state sought to regain control over photography; for a period in Victorian London, photographers required official permits to take pictures in parks, with "persons and groups of persons" explicitly excluded as potential subjects. As Geoffrey Batchen concludes, "It turned out that surveillance was the prerogative of the state, not the individual" (2002: 451).

This early restriction occurred simultaneously with the rise of photography as a significant evidentiary tool—by the end of the nineteenth century, photographs were routinely used in the courtroom (Mnookin 1998). Importantly for our argument, photographs quickly came to be used to identify individuals engaging in anti-state or other political activity. Most famously, photographs of proud revolutionaries standing at the barricades during the Paris Commune of 1871 fell into the hands of police as a form of "unintentional wanted posters." These images were then used to identify those insurgents left at large in the wake of the Commune's suppression. Scholars identify these photographs as an important milestone along the path of the technology's progressive refinement as a tool of social oversight and regulation (Tagg 1998; Pryzblyski 2001). Ironically, the images of the Communards simultaneously served to enable the constitution of a revolutionary movement in opposition to the state through the glorification of the barricades *and* to allow for identification and repression. By the twentieth century such techniques were well-established. Notoriously in Britain in 1913, unauthorized photographs of "militant" suffragettes were confiscated by the police. Their individual portraits were then printed on cards that identified the women so that they could be recognized by the authorities.

Needless to say, in contemporary times, such pictures are made automatically by cameras placed in public spaces, constantly recording information that may at any moment be extracted as evidence in the event of a disturbance or crime. The desire for such "infinite" visual evidence goes back even before the invention of photography was announced in 1839. As Batchen again relates, there were suggestions in 1824 that a room-sized *camera*

obscura be erected in Glasgow for the permanent surveillance of the passing population. A contemporary writer enthuses, "By this means, the necessity of sending out emissaries to reconnoiter the conduct of the lieges would be superseded, since everything would then take place, as it were, under the eye of the Police" (2002: 447).

While the history of photography has seen the gradual perfection of this repressive surveillance function of photography, it also reveals a number of instances of photographers being hassled by authorities without having committed any crime. Swiss artist Robert Frank, photographing during his Guggenheim Fellowship for what became the book *The Americans*, was arrested in 1955 as a "suspicious foreigner" while driving through Arkansas in a car with New York license plates. A state police report stated:

This officer investigated this subject due to the man's appearance, the fact that he was a foreigner and had in his possession cameras and felt that the subject should be checked out as we are continually being advised to watch out for any persons illegally in this country possibly in the employ of some unfriendly foreign power and the possibility of Communist affiliations.

(Brookman 2010: 216)

In the wake of the Cold War and the witch-hunts of Senator Joseph McCarthy, many Americans were suspicious of immigrants, especially Jews. But as discussed above, these instances of restricting photographers have generally been conceived as exceptional. They may be compared with attempts by totalitarian regimes to suppress photographic images of unflattering events. Intriguingly, this is becoming harder to achieve in the age of ubiquitous networked photography. For instance, although the Iranian government attempted to repress pictures of any kind from the country's widely contested 2009 elections, photographs and first-hand accounts nevertheless continued to circulate by virtue of private mobile phones. Amateur video and pictures of Neda Agha-Soltan, the young woman killed by the security forces during a demonstration, has been viewed as signalling a broader change in the way information is disseminated, including what has been described as "the potential to witness repression worldwide" (Brookman 2010: 112).

This would seem to confirm Azoulay's account of the potential of photography to generate political claims whose address extends beyond the borders of the nation state, appealing to a global community of the governed. Even when photography restrictions pass into law:

the ability to enforce them universally is difficult, due to the logic of the technology—its operational facility can be in anyone's hands—and the global travel networks that make it possible to

smuggle the camera into areas that are off limits.

(Azoulay 2008: 114)

The attempts of the Iranian regime to block access to Facebook and Flickr would seem to reflect both state anxieties about this political potential and the difficulty of adequately preventing the circulation of images. Yet, in a contemporary iteration of the dual function of the Paris Commune images, the Iranian regime has used sophisticated surveillance technology provided by the Nokia Siemens Networks to analyse and reconstruct digital data, including images uploaded to social networking sites, in order to identify and track down dissidents (Pop 2010). Barry French, Head of Marketing and Corporate Affairs for the Nokia Siemens Networks, demonstrated the utility of the terrorist threat in justifying state repression by telling a European Parliament Human Rights Hearing that the technologies provided to Iran were necessary “to support law enforcement in combating things like child pornography, drug trafficking and terrorism” (French 2010). In a generalized climate of anxiety created by the 9/11 attacks, we have seen attempts by nation states around the world to monopolize the photographic gaze, extending its repressive function while simultaneously introducing restrictions that limit its ability to circulate political claims across borders. While such reorientations of the balance between these two poles are not unusual in wartime, what is unique about our current situation is the difficulty of conceiving these measures as aberrations, or temporary crisis measures.

NO CREDIBLE PHOTOGRAPHIC INTEREST: IF YOU SEE SOMETHING, SAY SOMETHING

This chapter focuses on the active intervention on the part of the democratic state to determine what is considered a legitimate photographic act in public space. We are concerned with the role the “War on Terror” has played in an attempted criminalization of photographic activity. In this section we focus on the Australian context before considering relevant parallels, such as Britain, which have been more extensively documented. At a time of ubiquitous digital photography politicians are acutely aware of photography’s power: the Australian Federal Government banned military personnel from photographing asylum seekers during the infamous Children Overboard Affair in October 2001, for fear of “personalising or humanising” them (Ward 2002: 28).

This act of state monopolization of the gaze coincided with the emergence of Australian anti-terror campaigns, in the years following 9/11, that sought to portray ordinary photographers as a source of potential danger. With the populace warned by the then prime

minister John Howard to “be alert, but not alarmed,” a National Security Hotline was established, and posters requesting information on suspicious activity were installed in prominent public locations around the country. In this environment of ambient fear, photographers were included as possibly suspicious figures. The “unusual videotaping or photography of official buildings or other critical infrastructure” was regularly cited amongst acts of “suspicious activity.”

In Western Australia, the “Office of State Security and Emergency Coordination,” as part of an initiative of the state police, released a checklist titled “Should I report it?” Secondly, amongst the six listed activities to look out for was the item “Is the person videotaping and photographing subjects which have NO CREDIBLE PHOTOGRAPHIC INTEREST?” A man is pictured taking a photograph of a parking sign. The text of this “easy Checklist for owners and operators of facilities to identify suspicious behaviour” continues with an example:

Operatives place a high value on video and photographic surveillance during the planning stage. Case History: In 2000 Jack Roche filmed the Israeli Embassy in Canberra, particularly the gates and security facilities. Roche also filmed the building housing the Israeli Consulate in Sydney. The footage was to be used by Jemaah Islamiah and Al Qaeda to plan an attack. The subjects of the footage would ordinarily be of little interest to tourists or passers-by.

There are a few points to note here. Most importantly, the climate of suspicion serves to legitimate the state becoming the arbiter of what is, and is not, a subject of photographic interest. Moreover, by declaring certain subjects outside the realm of “credible photographic interest,” the state makes an appeal to aesthetic judgement—an unlikely matter for the police to take responsibility for. A situation in which the police are asked to determine what is worthwhile photographing is the very definition of photographic censorship. Notably, the rationale for “photographic interest” is what a tourist or passer-by might typically be interested in. When Melbourne’s Southbank shopping and entertainment complex was forced to defend its ban on photography, a spokesman said that the ban had been prompted by people “taking photos of obscure things” and of “things that would be of no interest to put in a photo album” (AAP 2006). There is obviously no consideration here of the practice of more ambitious, professional or independent-minded photographers (such as artists) in these claims.

Very similar stereotypical portrayals of the photographer as potential terror suspect are repeated in posters that were produced in the United Kingdom and United States following 9/11. In each instance, photographic activity is conflated with suspicious activity. Two

examples of such advertisements will suffice to make our point. In the United Kingdom, a public display was released in 2008 specifically targeting photographers. The ad featured a graphical grid of compact cameras across a red-coloured background. One camera was circled and highlighted in white, with the attached message, "Thousands of people take photos every day. What if one of them seems odd?" Although the text continued with the statement that "Terrorists use surveillance to help plan attacks, taking photos and making notes about security measures like the location of CCTV cameras," there is in fact no evidence that photography was involved in any way during the planning of attacks in London in July 2005. Moreover, building facades that clearly show security cameras are now freely available on Google Street View.

Similarly, in 2009 the Chicago Transit Authority (CTA) posted an advertising sign on their trains and stations with the heading, "If you see something, say something." Amongst a shortlist of five bullet points including "Unattended packages" and "Noxious smells of smoke" was the item "Excessive photographing/filming." Needless to say, the phrase "excessive" is highly ambiguous, and open to considerable interpretation. As critics were quick to point out, the instruction to be suspicious of photographers also contradicts the CTA's own policy that states, "The general public is permitted to use hand-held cameras to take photographs, capture digital images, and videotape within public areas of CTA stations and transit vehicles for personal, non-commercial use" (Miller 2010).

Britain has attracted considerable attention for its attempts to restrict photography in public spaces. In particular, Section 44 of the Counter Terrorism Act, introduced in 2000 and rescinded in 2010, was used by police to stop and search photographers in any situation. Although members of the public and the media do not need a permit in Britain to film or photograph in public places, and police have no official power to stop them filming or photographing incidents or police personnel, Section 44 allowed officers to stop and search anyone without the need for reasonable suspicion. As a result, photographers were frequently questioned by officers for taking pictures of tourist destinations, landmarks and even in one case a fish and chip shop. As editor of *The British Journal of Photography* Olivier Laurent put it, responding to complaints from readers, "The person will normally be taking a photograph of something perfectly mundane and a police officer will approach them and either claim that they can't take photos in that particular place or they will ask the photographer to explain what they are up to and record their details" (Hughes and Taylor 2009). Insidiously, private security guards act as the initial operatives of such restrictions, often operating on the false assumption that photographing the buildings they are protecting is illegal.

In a disturbing trend, those who photograph police officers are most likely to be targeted in this new climate of suspicion. In April 2009, Malcolm Sleath was questioned under Britain's anti-terrorism laws for taking photographs of a police car in a public park (Cosgrove 2009). The decision that the officers of the state are not a "credible" subject of photographic interest is again most explicit in Britain, where Section 76 of the Counter Terrorism Act 2008 provides for jail terms of up to ten years for people who elicit information, including through photographic means, about members of the police force or intelligence services "which is of a kind likely to be useful to a person committing or preparing an act of terrorism." Section 76 has created controversy in the United Kingdom, as it reverses the onus of proof, forcing photographers to prove they have a "reasonable excuse" for taking such photographs, or face potential jail time. Similarly in Australia, citizen journalist Nick Holmes à Court was threatened with arrest in December 2008 under the country's terror laws for recording footage of a police search on his mobile phone (Grubb 2008). These examples suggest that as the state attempts to monopolize the photographic gaze, its own officers are cast as undeserving of credible photographic interest. The state that scrutinizes and uses surveillance, it seems, is unwilling to subject itself to surveillance and scrutiny. Notably, it is precisely images of state personnel, members of the Israeli Defence Force, that provide Azoulay with many of her most potent examples of the capacity of photography to highlight state repression and contribute to the constitution of a non-state civil sphere, thus raising real questions about the consequences of removing such personnel from the photographic record.

Even when photographing certain subjects is not explicitly restricted, the net result of this climate of suspicion imposes a secondary burden of self-censorship amongst photographers. In research for this chapter, we held focus groups and interviews with photographers in Melbourne and London. In every case what became clear is that photographers are no longer taking certain kinds of photographs on the basis that they do not want to appear suspicious. This relates particularly to photographs of children but also to public infrastructure such as train stations and bridges. Grant Smith, an architectural photographer based in London, who has been "stopped and searched" eight times in only a few years, told us that he is "not taking the pictures that are there" since "being stopped and searched erodes your confidence."

Can we assume that this climate of self-censorship, along with the more explicit restrictions, is a temporary measure—"exceptions," in Azoulay's words? Or is there more to these exceptional measures than such a view countenances?

PHOTOGRAPHY RESTRICTIONS AND THE STATUS OF THE CONTEMPORARY EXCEPTION

As we have seen, Azoulay's account of photography relies on the view that the restriction of photography is an exception that at times punctuates the normal free flow of images. But is it possible to regard restrictions on photography in the wake of the war against terror as temporary aberrations, without significant implications for the civic potentials of the photographic relation? Following Agamben, we would like to suggest that these "exceptional" measures can no longer be conceived as temporary crisis mechanisms. Rather, what we are witnessing is a reorientation of state power, in which the permanent threat of terrorism allows the exception itself to become the norm. As the temporal horizons of the purported emergency are projected into the future it becomes imperative to consider whether these new restrictions on photography may represent a more permanent transformation of the photographic relation: an attempt precisely to disrupt its capacity to foster non-state political relations, and to consolidate its control function.

Agamben's analysis of the state of exception focuses on the paradoxical way in which the legal order attempts to incorporate the suspension, or absence, of law. His position is therefore at odds with that found in many defences of emergency powers, which view exceptional measures as simply one aspect of the juridical order, at worst "an unfortunate but periodic lapse," necessary to restore this order (Hussain 2003: 18). Azoulay's account of photography restrictions seems to rely on conceiving them precisely as such unfortunate lapses. "In certain exceptional cases, certain state apparatuses are able to suspend photography, typically in restricted areas and for limited periods of time" (Azoulay 2008: 114). What such accounts of emergency measures as temporary aberrations obscure, Agamben would suggest, is the peculiar fact that what must be brought within the legal order is nothing but the (temporary) annihilation of this very order. In his view the state of exception is not simply another constitutional provision; rather, it is the mechanism through which the legal order seeks to ensure a relation to its outside, to grasp life itself and so ensure that there is no realm of life without relation to law.

This reading of the exception has important ramifications for any attempt to conceptualize a form of politics that is not subsumed within the order of sovereign power. It is precisely photography's potential to foster such a non-state politics that Azoulay highlights. "Photography provides modern citizens with an instrument enabling them to develop and sustain civilian skills that are not entirely subordinate to governmental power," and to form relations with others that are not under the control of this power (Azoulay 2008: 115). As a

non-state contract between formally equal people, the social contract of photography, in her view, subverts the state's attempt to monopolize the space of political relations. By positioning the state of exception in a border zone between political fact and legal order, Agamben suggests that it has more in common with resistance, civil war and insurrection than with ordinary juridical measures. The state of exception, according to such an account, is a border zone in which the connection between political praxis and the legal order becomes tenuous, as politics threatens to escape the bounds of this order entirely. Given Azoulay's thesis that photography potentially constitutes a civic sphere unmediated by the state, this raises questions about the role of such exceptional measures in reconstituting the authority of sovereign power and reasserting control over those aspects of the photographic relation that she views as conducive to non-state civic relations. If we follow Agamben, then the state of exception is not strictly a legal concept nor a temporary crisis measure, but the figure through which the state attempts to internalize its absence and ward off the very possibility of a non-state civic sphere that Azoulay sees enabled by the camera. In the state of exception, law borders a non-legal politics that has more in common with revolution and civil war than with rights, representation and conformity to legal norms, and which thus, like revolution and civil war, explicitly challenges the legitimacy of such order.

For Agamben, relying on Carl Schmitt's account of sovereignty as a "borderline concept," the sovereign marks the point of "indistinction" between law and violence, juridical and factual order (Schmitt 1985: 5). "The paradox of sovereignty," in Agamben's view, is that the sovereign forever occupies a liminal space—at once inside and outside the juridical order—and thus marks the limit point at which inside and outside, law and life, can no longer be distinguished. That which appears to be external to the juridical is always that which the juridical must capture in order to function. In Azoulay's formulation, the photographic relation itself contains the possibility for escaping the capture of all politics in the state order, and her re-conceptualization of contract theory is counterposed to "Carl Schmitt's reduction of the political to the space opened by and demarcated through the sovereign decision" (Azoulay 2008: 86). Instead she suggests that the "mutual guarantee established amongst the citizens of the citizenry or photography is the basis for the formation of a political community that is not subjected or mediated by a sovereign" (Azoulay 2008: 126). If, as Schmitt and Agamben suggest, the state of exception is the mechanism that captures all of life in the realm of the law, foreclosing the possibility of a politics not already subsumed within the sovereign order, the mobilization of a discourse of emergency to restrict photography would seem to have real consequences for the capacity of such a non-sovereign political community. Rather than temporary aberrations, such measures would then appear as mechanisms whose specific function is to neutralize the non-state political power Azou-

lay sees in the photographic relation in order to internalize photography once again in the state order. If this is so, it becomes imperative to conceptualize forms of praxis capable of challenging this capture. It is to such forms of praxis that we now turn.

ARTISTIC AND POLITICAL RESPONSES

Techniques of surveillance are closely linked to developments in photographic technology from the earliest aerial photographs to satellite pictures. An 1869 article titled “The legal purposes of photography” suggested that once photography was “perfected,” the “streets and alleys of our cities should be equipped with and surveyed by cameras so that anyone rioting or disturbing the peace would be caught on film” (Mnookin 1998: 19). In the twenty-first century, cameras on street corners, in shops and in public buildings silently record our every move, while web-based tools such as Google Earth adapt satellite technology to ensure that there is no escape from the camera’s all-seeing eye. Throughout this chapter, we have argued that the photographic relation is a site of struggle, and that the outcomes of this struggle determine the relative balance between its repressive surveillance function and its non-state civic function at any historical juncture. If this is true, what forms of praxis are available to us today that could consolidate the latter while challenging the former? How do we contest the state monopolization of the gaze?

A variety of activists and artists have taken surveillance technology as their subject, turning the camera back on itself in acts of “counter-surveillance” (Monahan 2006). For instance, the Australian artist Denis Beaubois has produced a number of influential works that question the role of the surveillance camera in the modern city. This book includes a photoessay with selected pieces from his work *In the Event of Amnesia the City will Recall...* (1996–97), which involved a series of videotaped performances in Sydney and Cleveland. For three days in a row the artist positioned himself in front of a surveillance camera in a public space. He stayed there in total immobility while puzzled passers-by watched him. Sometimes his stoic presence was tolerated; sometimes he was “escorted” off the public premises under some rather bureaucratic excuse. On the second day he came back and held white sheets with printed text, starting with one that indicated his name. On the third day, he came back with more sheets, asking questions such as “May I have a copy of the video footage?” “Move the camera up & down to agree” or “Warning—You may be photographed reading this sign.” Over time, interaction took place between Beaubois, the camera, the hidden security staff and pedestrians. As Thomas Levin (2002) identifies, Beaubois’ works consider the video camera itself as an “actor,” producing its own electronically generated point of view. In this sense it relates to Paul Virilio’s (1994) narrative of the gradual automation of

sight, and the resulting paradox of “sightless vision.”

If Beaubois’ work is noteworthy as a pre-9/11 example of artistic activity that operates in a deceptively simple but profound way to question the tension between the individual and corporate or state gaze, recent legislation in the United Kingdom that links photographers to potential terrorist activity has generated a more organized political response. Since the London bombings in 2005, UK police have routinely invoked anti-terror legislation to prevent photographers from carrying out their work, whilst photojournalists are constantly filmed at public gatherings and their details kept in an ever-growing database. The British campaign “I’m a Photographer, Not a Terrorist!” was formed as a direct response to this situation by Marc Vallee, a photojournalist who specializes in documenting protests. Via the website photographernotaterrorist.org and e-mail campaign, its supporters quickly grew to thousands. They have staged protest marches and designed tee shirts, badges and posters in defence of photographers’ rights and to highlight what they believe is the growing harassment of amateur and professional photographers by police and overzealous officials.

In 2009, they organized a performative protest outside Scotland Yard. Hundreds of photographers, both professional and amateur, held a mass photo-call and in January 2010 a mass “photogathering” took place at Trafalgar Square, generating considerable media attention. Campaigners have argued that misplaced fears about terror, privacy and child protection are preventing amateur photographers from enjoying their hobby, and keeping professional photographers from their work. As Vallee has argued:

Anti-terrorism legislation talks about creating a hostile environment for terrorists to operate but the reality is that it is creating a hostile environment for public photography. That has an incredibly detrimental effect on freedom of speech.

(Hughes and Taylor 2009)

As Grant Smith told us, “You have to protest, otherwise we will live in fear, where we’re too scared to bring out our camera because someone might say, ‘you can’t photograph here.’”

CONCLUSION

In July of 2010, the British Home Secretary announced the suspension of the controversial stop and search powers granted by Section 44, after the European Court of Human Rights ruled that they violated the right to a private life. In a notice on their website, the “I’m a

Photographer, Not a Terrorist” group celebrated the move, but warned that “there are still a swathe of laws that police can and will still use to harass photographers,” including Section 76, which makes it illegal to “elicit information about a police officer” and includes photographing them. Indeed, the fact that this may be a victory only in name was signalled by the following statement issued by the Home Secretary: “Officers will no longer be able to search individuals using section 44 powers. Instead, they will have to rely on section 43 powers—which require officers to reasonably suspect the person to be a terrorist.” Nonetheless, by drawing attention to the political implications of the restrictions of photography, which were but one of the consequences of the new terror regime, photographers succeeded, in some measure, in moving the balance of the photographic relation from the repressive surveillance pole to the civic pole, that is, to its capacity to circulate political claims across borders.

Azoulay’s notion of the “civic contract” provides us with an account of photography, which in our view should be taken as an aspiration and an impetus to critical resistance, rather than an ontology of the photographic relation as it exists today. As she notes, if the right to distance ourselves from the state through photography is not defended, we “will be deprived of the protection that can be granted by photography as an instrument that employs power that is in the hands of the governed and not only in the hands of the sovereign” (Azoulay 2008: 115). The possibility for photography to disrupt the state’s monopolization of politics needs to be fought for rather than presupposed. This fight must involve resisting the restrictions of photography inaugurated ostensibly to protect us from terrorism. Rather than conceiving these as temporary or “exceptional” measures, we should instead conceive them as attempts to permanently strengthen the surveillance function of photography at the expense of its civic function. It is only by treating these measures as a site of struggle, whose outcome will determine the contours of the photographic relation, that we can foster those non-state forms of civic life that Azoulay’s account is premised on, and resist the state monopolization of the gaze.

REFERENCES

- AAP (2006), “Southgate Photo Ban ‘Over the Top’,” *The Age*, 25 July. <http://www.theage.com.au/articles/2006/07/25/1153746830138.html>.
- Agamben, G. (1998), *Homo Sacer: Sovereign Power and Bare Life* (trans. D. Heller-Roazen), Stanford: Stanford University Press.
- Agamben, G. (2005), *State of Exception* (trans. K. Attell), Chicago, IL: University of Chicago Press.
- Azoulay, A. (2008), *The Civil Contract of Photography* (trans. R. Mazali and R. Danieli), New York:

Zone Books.

- Batchen, G. (2002), "Guilty pleasures," in T. Y. Levin, U. Frohne and P. Weibel (eds), *Ctrl [Space]: Rhetorics of Surveillance from Bentham to Big Brother*, Karlsruhe/Cambridge: ZKM Center for Art and Media/MIT Press.
- Brookman, P. (2010), "A Window on the World: Street Photography and the Theatre of Life," in S. S. Phillips (ed.), *Exposed: Voyeurism, Surveillance and the Camera Since 1870*, San Francisco, CA: San Francisco Museum of Modern Art.
- Cosgrove, S. (2009), "Man Questioned Under Terrorism Law After Taking Picture of Police Car in Park," *Enfield Independent*, 14 April. http://www.enfieldindependent.co.uk/news/4289832.Man_questioned_under_terrorism_law_after_taking_picture_of_police_car_in_park.
- Egan, C. (2006), "Picture This: City Puts Photo Ban in Frame," *The Age*, 30 July.
- Foucault, M. (1979), *Discipline and Punish: The Birth of the Prison* (trans. A. Sheridan), Harmondsworth: Penguin.
- French, B. (2010), "Statement to the Public Hearing on New Information Technologies and Human Rights," European Parliament, Subcommittee on Human Rights, 2 June. <http://www.nokiasiemensnetworks.com/news-events/press-room/statement-to-the-publichearing-on-new-information-technologies-and-human-rights>.
- Grubb, G. (2008), "Who Watches The Watchers: Australian Threatened With Arrest Under Australian Anti-Terrorism Act For Being a Citizen Journalist," *TechWired Australia*, 23 December. <http://techwiredau.com/2008/12/who-watches-the-watchers-australian-threatened-with-arrestunder-australian-anti-terrorism-act-for-being-a-citizen-journalist>.
- Hughes, M. and Taylor, J. (2009), "Warning: Do Not Take This Picture," *The Independent*, 3 December.
- Hussain, N. (2003), *The Jurisprudence of Emergency: Colonialism and the Rule of Law*, Ann Arbor, MI: The University of Michigan Press.
- Levin, T. (2002), "Denis Beaubois: In the Event of Amnesia the City Will Recall," in T. Y. Levin, U. Frohne and P. Weibel (eds), *Ctrl [Space]: Rhetorics of Surveillance from Bentham to Big Brother* (pp. 608–611), Karlsruhe/Cambridge: /ZKM Center for Art and Media/MIT Press.
- Lyon, D. (2003), *Surveillance After September 11*, Polity Press: Cambridge.
- Miller, C. (2010), "Chicago Transit Authority urges commuters to report photographers," *Pixiq*, 18 January. <http://www.pixiq.com/article/chicago-transit-authority-urges-commuters-toreport-photography>.
- Mnookin, J. L. (1998), The Image of Truth: Photographic Evidence and the Power of Analogy," *Yale Journal of Law & The Humanities*, 10: 1, pp. 1–74.
- Monahan, T. (2006), "Counter-surveillance as Political Intervention?" *Social Semiotics*, 16: 4, pp. 515–534.
- Pop, V. (2010), "Nokia-Siemens Rues Iran Crackdown Role," *Bloomberg Business Week*, 3 June. http://www.businessweek.com/globalbiz/content/jun2010/gb2010063_509207.htm.
- Przyblyski, J. M. (2001), "Revolution at a Standstill: Photography and the Paris Commune of 1871," *Yale French Studies*, 101, pp. 54–78.

- Rancière, J. (2009), "Notes On the Photographic Image," *Radical Philosophy*, 156.
- Schmitt, C. (1985), *Political Theology: Four Chapters on the Concept of Sovereignty* (trans. G. Schwab), Cambridge: MIT Press.
- Tagg, J. (1988), *The Burden of Representation: Essays on Photographies and Histories*, London: Macmillan.
- Virilio, P. (1994), *The Vision Machine* (trans. J. Rose), London: British Film Institute.
- Wacks, R. (2010), *Privacy: A Very Short Introduction*, Oxford: Oxford University Press.
- Ward, I. (2002), "The Tampa, Wedge Politics and a Lesson for Political Journalism," *Australian Journalism Review*, 24: 1, pp. 21–39.

NOTES

- 1 We would like to thank London-based photographers Grant Smith and Nikos Efstratiou, and the Melbourne photographers involved in a focus group at the Centre for Contemporary Photography in August 2010. An earlier version of this chapter was previously published here: "No Credible Photographic Interest: Photography Restrictions and Surveillance in a Time of Terror," *Philosophy of Photography*, 1: 2, 2010, pp. 177-195.

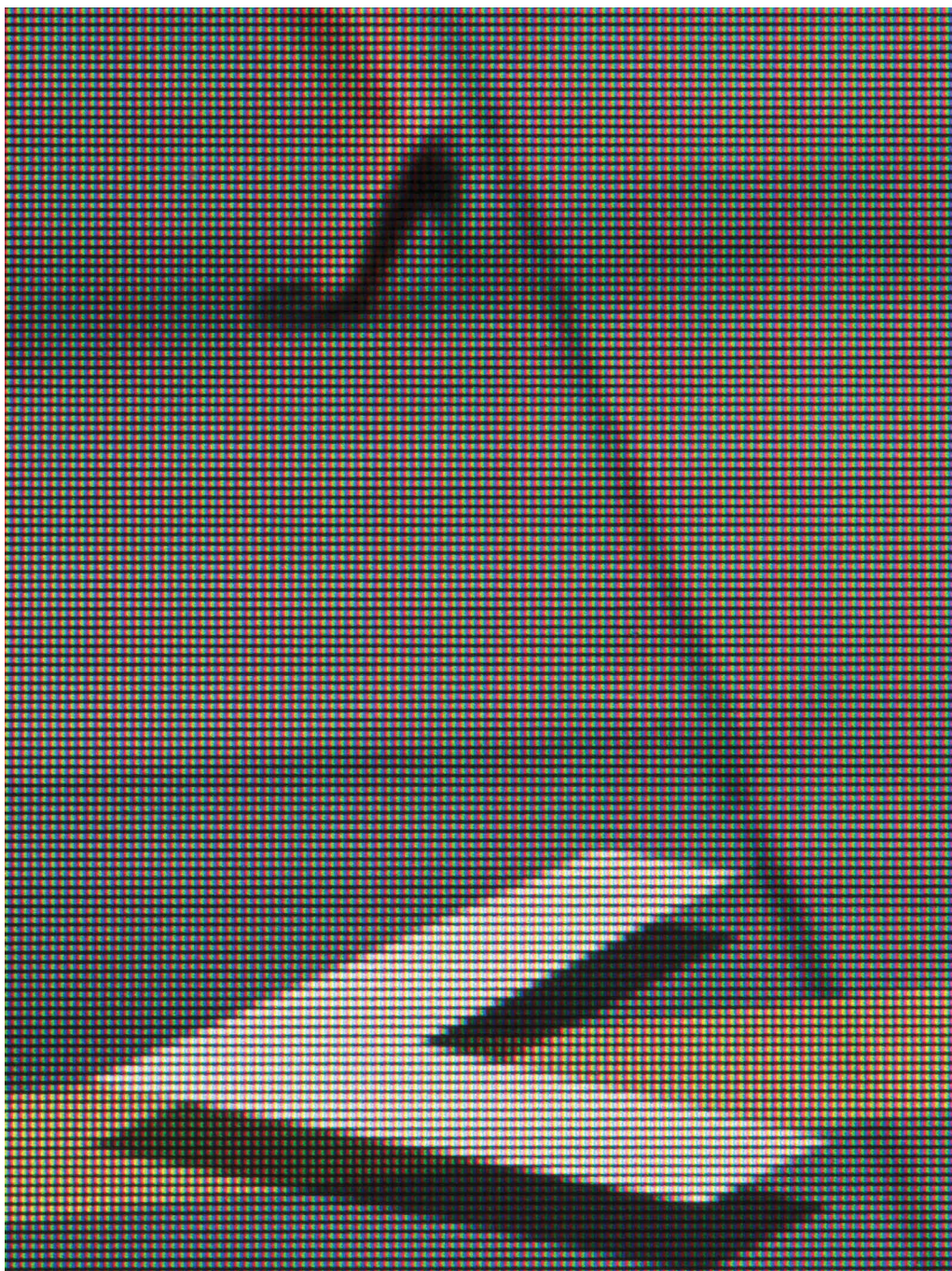
4

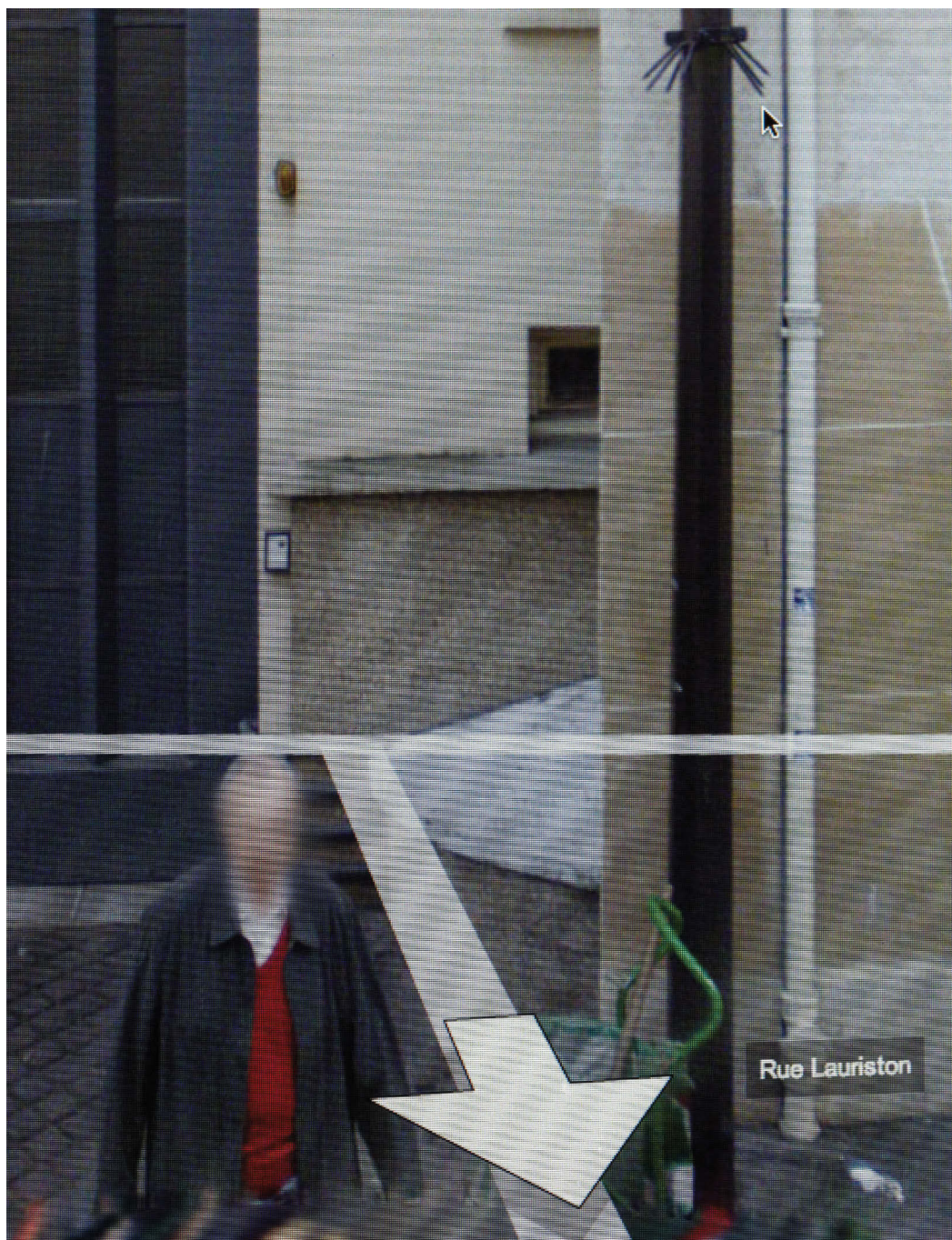
STREET VIEW/INTERFACE

—

Michael Wolf











PAGE 75

—

© Michael Wolf, *Street View/ Interface* #9.

PAGES 76 / 77

—

© Michael Wolf, *Street View/ Interface* #22.

© Michael Wolf, *Street View/ Interface* #30.

PAGE 78

—

© Michael Wolf, *Street View/ Interface* #11.

PAGE 81

—

© Michael Wolf, *Street View/ Interface* #7.



**BILL HENSON AND THE
POLEMICS OF THE NUDE CHILD
IN PHOTOGRAPHY**

—

Alexandra Heller-Nicholas
and Anne Marsh

Before the Henson scandal exploded in mid-2008 in Australia, the subject of a perceived increase in the sexualization of children had been brewing in the public imagination for some time. A number of events added fuel to the already potent fire with concerns about child sexual abuse turning into outright panic. The Henson controversy occurred at the same time that former Minister for Aboriginal Affairs Milton Orkopolous was sentenced on 30 different charges relating to child pornography, child sex and drugs in New South Wales. According to David Marr, Orkopolous had been grooming Aboriginal teenage boys for sex with drugs. In response, Premier Morris Iemma's government was—in the face of accusations that they ignored early warnings about Orkopolous—determined not to appear soft on paedophiles, even firing the person who first reported his actions (2008: 3).

Prior to the 2006 arrest of Orkopolous, the national press presented an increase in news reports that demonstrated the level of risk that children and young people experienced from sexual predators. As discussed elsewhere in this book, a number of highly publicized incidents garnered much attention in Australia in 2002, including separate cases of Melbourne private school boys and a young lifesaver appearing on what had been described as gay websites. This spawned widespread nervousness about the photographing of children at sporting or sports-related events, regardless of the innocent intent on the part of family or friends. This chapter employs the Henson case as a primary case study to explore the complex web of issues that this scandal encompassed. Some of these were noisily debated in the public domain, while others remained curiously ignored.

The broader climate within which incidents such as these are rendered so outrageous and shocking to the public imagination has a long history that obviously transcends Australian national boundaries. As outlined by Sharon Hayes and Belinda Carpenter (2012), the domain of childhood itself has been increasingly expanded in the West as life expectancy has increased. The reasons for this shift were primarily economic and social. In fact, it is only since the sixteenth century that childhood has been conceptualized as a separate developmental period, with children previously considered to be small adults. Before the sixteenth century, high infant mortality rates made it less feasible to form emotional connections to children.

The notion that children needed protecting developed much later, and Hayes and Carpenter note that child labour was rampant during the eighteenth and nineteenth centuries.

This changed when industrialization largely negated the need for child labour, shifting the status of children to that of beings that needed to be looked after and nurtured. By the twentieth century, families were increasingly having children for personal reasons rather than to meet labour requirements, and this coincided with an understanding of childhood as a distinct phase in life, with notions of innocence and purity beginning to be associated with childhood during this period. This was premised on the naiveté of children, and the authors note that by the end of the century, children were considered to be vulnerable to exploitation by adults to a degree not previously considered.

Vulnerability to sexual threat is obviously a part of this story, placing an onus on adults to maintain the naiveté and innocence of children to a point where children are in effect viewed as asexual. Deviation from this becomes taboo, and an understanding that children cannot consent to sex removes them from the domain of sexuality completely. The relatively new notion of adolescence became a way to further expand this childhood period.

Hayes and Carpenter suggest that while children's sexuality has been denied and sex with them has been criminalized, the sexualization of children in commercials and other media forms has simultaneously been on the rise. In these contexts, children's bodies act paradoxically as "objects of desire while at the same time being objects of taboo" (2012: 147). This is even more confusing with female teenage bodies, as they are biologically closer to adult women's bodies, and thus the distinction between child and adult becomes more indistinct. We argue that it is the sexualization of adolescent women and this associated tension that act to cement the taboo about adults having sex with teenagers: "Pubescent young people are suggestive of sex and all that accompanies that, and must therefore be protected from it at all costs" (2012: 147).

A longer childhood period coincides with a more tightly policed moral code, either literally (through the law that criminalizes adult-child sex), or socially (through behaviour that is legal but still socially objectionable). This reflects a broader cultural desire to control adolescents and to protect them, and what Hayes and Carpenter identify as "legal moralism" acts to make sure that individuals who disobey laws or reject taboos are punished. This is despite the fact that adolescents today have access to a whole range of consumer products and technologies that encourage experimentation—from sexy clothes to online pornography, contraception, etc. Although exposure has increased, a number of social rather than legal punishments have been put in place to discourage exploration and experimentation. "Children are made very aware of what adults expect of them, and therefore are on alert for disapproval and disenfranchisement" (Hayes and Carpenter 2012: 150). The adolescents in

Henson's photographs are seen to reject these rules: they "show abandonment to frailty" (Hayes and Carpenter 2012: 150). While their nudity, in and of itself, is not an issue, the fact that it is on display for an audience has been problematic.

ART CONTROVERSIES ABOUT CHILDREN AND SEXUALITY

Henson was aware of international art scandals surrounding US photographers like Jock Sturges and Sally Mann and their controversial depictions of young people. However, Marr suggests, his own belief that his art was not ideological to some degree blinded him to a rising nervousness in Australia about the sexualization of children and child abuse (Marr 2008: 37). K. P. Hall notes that as far back as the photographs of Lewis Carroll and Julia Margaret Cameron, there has been photographic work that "teetered on the borderline of proprietary and perversion," working in opposition to traditional images of children that present them in an untouched state of innocence (2001: 42).

The issues surrounding Lewis Carroll were conflated by psycho-analytic literary scholars in the 1990s, who analysed his book *Alice in Wonderland*, and interpreted it as a series of sexual innuendoes (Wallace 1990: 19–38). In his own time, Carroll—like Henson—was caught up in debates surrounding the rights of the child. As indicated earlier, child labour was widespread in the nineteenth century and Carroll penned numerous letters to the newspapers arguing against this practice (Marsh 2003: 135–137). He was a great champion of the rights of the child. Contra to some literary theorists, *Alice in Wonderland* is arguably one of the most empowering texts for children told from the perspective of a young girl.

Julia Margaret Cameron was criticized in her own time, but Hall is incorrect when he states emphatically that she worked in opposition to the ideas of innocence. Cameron's work is ambiguous. On one hand, she is the good mother of the nineteenth century. Her amateur theatricals involving dress ups, where the Madonna and child appear in various iterations, attempt to position the child in a state of grace and/or innocence. This is seen in images from the Madonna series such as *The Kiss of Peace* (circa 1865) where she seeks to express the aura of the religious subject. However the depiction of the Holy Virgin, Christ and St John the Baptist in *Spring* (1864) certainly has sensual overtones. Here we see the Christ child touching the Mother's lower torso, while St John leans against her in a seductive pose. Although cast in deep shadow, it is clear that St John is actually a girl. Carol Armstrong analyses the undercurrent of eroticism in Cameron's Madonna series but presents her as the mother of convention, the good mother who is obsessed with quasi-religious rapture giving her subjects an erotic edge that disrupts social codes (Armstrong 1996: 135–136; Mavor 1995).

Hall notes that in some sense the perceived threat against children that photography potentially poses is foreshadowed in photographic terminology: “We talk about ‘capturing’ photographic moments in an almost predatory language—shooting and capturing—as if they are prey caught on paper ...” (2001: 45). Susan Sontag famously said that: “to photograph people is to violate them ... it turns people into objects that can be symbolically possessed” (1984: 15). In many ways this is the heart of the Henson debate and it is what fortified his opposition. Added to this, we also understand that photography is indexical, it records what is in front of the lens, in an unaltered state it represents reality: at least, this is what we tend to believe. Because of this, photographs can be used in courts of law as evidence. The medium itself is embedded in our legal systems and in our psychological beliefs. In the case of children and adolescents in Australia, the anxieties that accrue around the medium and its representations explode in the Henson controversy of 2008.

THE BILL HENSON CONTROVERSY

Since the early 1980s, Henson’s work has addressed the transgressive nature of naked youths. The inclusion of his photographs of nude teens at the 1995 Venice Biennale launched his international reputation as one of Australia’s most well-regarded contemporary artists, with international art world luminaries such as MOMA director Glen D. Lowry offering to fly to Australia from New York City in 2008 to defend him and verify his standing as an artist (Marr 2008: 121). His status was equally celebrated at home: Marr noted that the 2005 retrospective of his work exhibited at both NSW and Victorian state galleries was “the biggest photography show in the nation’s history” (2008: 42). According to Marr, the May 2008 exhibition at the Roslyn Oxley9 gallery in Sydney consisted primarily of photographs Henson had taken in Rome. Forty-one images appeared on the gallery’s website as promotional material to support the exhibition. But this show was not intended to be a major one in the artist’s career, and Henson himself admits to being unprepared for the negative interest in his work that followed. The moral panic that ensued in the public sphere was primarily concerned with 14 images of an unnamed 12-year-old female model (identified by Marr only by the initial “N”), and two of a young boy. The image used on the gallery’s invitation card, *Untitled #30*, was the most controversial picture.

Marr’s *The Henson Case* (2008) provides the most detailed overview of the controversy to date, but Marr is candid about his bias towards the photographer. In May 2008, the Arts editor at the *Sydney Morning Herald*, Richard Jinman, received an invitation to Henson’s exhibition, and flagged the now-controversial image as “a bit off” (Marr 2008: 1). He forwarded it to columnist Miranda Devine who had recently run a series of articles about the

sexualization of young girls. After Devine's article ran in the paper the next morning, it was picked up by 2GB talkback radio host Chris Smith who rallied strongly against Henson's show from the outset. His producer, Paul Sylvester, scrambled to find interview subjects and in the process notified high-ranking officials of the exhibition, including Tony Ritchie, the media adviser to the NSW Police Commissioner, Andrew Scipione. Ritchie happened to be with Deputy Police Commissioner Nick Kaldas when he heard from Sylvester, and Kaldas immediately notified the Child Protection and Sex Crime Squad.

Marr underscores just how crucial the Internet was in the speed with which news about the exhibition spread between the press, police and government officials, and claims that it was only one hour between the story first breaking on talkback radio and the first strike by police. Clare Masters contacted Premier Morris Iemma's office, and responsibility for investigating the story finally landed with Superintendent Allan Sicard of Rose Bay because the gallery was in his jurisdiction. At the same time, public outrage continued to grow provoked by heated discussions on talkback radio and by early afternoon, Hetty Johnston—founder and executive director of child protection advocacy group Bravehearts—had been contacted and had started to mobilize her press response.

By 4.30 pm, Inspector Mark Kellet from the Rocks police station attempted to locate nude Henson photographs at the Art Gallery of NSW, and was directed to the Roslyn Oxley9 Gallery. Although the gallery was unaware that the Classifications Board had already viewed the images on the Roslyn Oxley9 Gallery website and deemed them not to be breaking any laws, they removed the images from the website later that afternoon. The Australian Communications and Media Authority (ACMA) had also deemed there was no legal issue, yet by the time they received formal complaints the gallery had already removed the images.

Even before the police arrived at the gallery to seize the photographs, Henson told Marr that he suggested they should call the police for protection, in view of rising tensions amidst the growing media scrum outside. The police expressed concern for the security of the staff, the work and the legal status of the work itself. In this context, Henson and Oxley were advised by a lawyer friend Nick Kostas to stop talking to the police and did not protest suggestions to shut down the opening.

The next morning, Sydney tabloid *The Daily Telegraph* led with headlines condemning Henson, with damning quotes from both Johnston and Premier Iemma. However, it was after the then prime minister Kevin Rudd's appearance on the Channel Nine Today programme denouncing Henson's work as "revolting" that other media outlets picked up the

story. Despite warnings from senior police that “this was a hard case to fly” (Marr 2008: 51), the photographs were seized from the Oxley gallery for reasons that Marr suggests had less to do with the law and more to do with the subjective reactions of certain officials to the sudden explosion of moral panic the day before:

The operation appears not to have been driven by the law but by the disgust of politicians and police all the way up to the commissioner Andrew Scipione. This born-again Christian and father of a teenage daughter found the photographs “entirely offensive.” Whatever doubts were being expressed in the upper echelons of the force, the commissioner backed the raid.

(Marr 2008: 51)

By 9:30 am on Friday 23 May, the warrant to seize the Henson photographs under the NSW Crimes Act for the production, possession and dissemination of child pornography was issued. Police filmed the raid, and were accompanied by child pornography expert Detective Inspector Michael Ryan who oversaw the seizure of all photographs of “N” showing more than her face. They also took another 18 photographs after looking at transparencies of Henson’s older work, all unused invitations to the previous evenings cancelled opening, seven copies of *Art World* magazine that had the girl’s face on the cover and even pages from the gallery’s visitors book.

The seized material was held at the Sydney Police Centre in Surry Hills, but panic spread to others in the art community: the publisher of *Art World* pulped all copies of the issue with the Henson cover, and hearing a rumour that falsely suggested that Henson had already been charged, the Albury Art Gallery in regional New South Wales voluntarily removed three small Henson photographs they had on display.

In the week following the seizure of Henson’s work, cracks began to appear in the public attack on Henson and his work. The prime minister himself met with backlash from the arts community he had so publicly courted during his highly publicized 2020 Summit in the form of a sternly worded letter in Henson’s defence. Actress Cate Blanchett was the most internationally visible of those to put their name to this letter, and thus brought the Henson scandal worldwide attention. At the same time, once he realized that the charges rallied against Henson had little chances of sticking, Police Commissioner Scipione began to make a distinction between his own personal reaction to Henson’s work and the law.

Because of jurisdictional issues that will be discussed below, ACMA and the Classifications Board addressed only the Henson images that appeared online. The former referred the

Henson images to the latter on Tuesday 27 May with the assumption that they would be deemed inoffensive, and Marr notes that the public grading of the images as “G” rated was the first suggestion in public that the case against Henson had little legal clout to back up the intensity of the moral panic that had provoked it. The only online place the full, uncensored *Untitled #30* appeared was a blog discussing art and censorship—because of the context and the photo itself, it was granted a “PG” rating. By this time the press were aware that the NSW Department of Public Prosecutions’ Nick Cowdery QC would not be seeking prosecution for Henson. Rejecting the bulk of the seized photographs, the DPP were only concerned with two photographs of naked drug addicts from Henson’s 1983–84 series, an unknown woman from a 2006 series, and the photographs of “N.” The DPP found that the images firstly would not necessarily cause offense, and that nudity was not enough to suggest the sexual context required in NSW child pornography laws. They also rejected the lesser charge of publishing an indecent article because nudity could not automatically be deemed to be indecent. When Assistant Commissioner Catherine Burns made the announcement publicly that no further action would be taken against Henson on 6 June 2008, Hetty Johnston responded “we are handing our children on a bloody plate to paedophiles” (Marr 2008: 127).

It is somewhat ironic that the Henson controversy occurred at the same time that the Australian Federal Police (AFP) were about to announce the findings of Operation Centurion, which was, at that time, the biggest investigation into child pornography online in Australia. According to Marr, 70 arrests were made, and 120 warrants were issued. Despite the Henson case resulting in no charges, it was a distraction to the work of AFP officers on Operation Centurion, diverting them from tracking down serious perpetrators (Marr 2008: 94–95). Significantly, the AFP announced the findings of Operation Centurion at the same press conference where they announced their investigation into Henson for child pornography crimes in the collection of the National Gallery of Australia was fruitless. After contextualizing their disinterest in Henson with the shocking findings of Operation Centurion, it could hardly be claimed they were being soft on the subject (Marr 2008: 121).

THE CASE AGAINST

The public face of the case against Henson was undoubtedly Johnston, who intensely opposed his work and unequivocally identified his photographs of naked youths as child pornography. Johnston proudly stated that she knew very little about the artist’s broader oeuvre. On an SBS *Insight* programme she said that she had never attended and never would go to a Henson exhibition and that it was not necessary to attend because the im-

ages were freely available online. In her view, the original context was irrelevant, and had no connection to her concern for the well-being of the nude girl depicted in *Untitled #30*. Johnston's main concern was the lack of checks in place to protect the child from exploitation. Even though in this case the child and parent consented, there was nothing to say that in other cases this could necessarily be assumed ("The Naked Eye" 14 June 2008).

Even in the first explosive days of the scandal, it became apparent that there was a broader discomfort amongst the public who perceived a holier-than-thou attitude in the art world. The latter were seen to flaunt their supposed indifference to issues of concern to the public. As Melinda Hinkson (2009) observed, the art scene as a whole was being criticized for not taking child exploitation seriously and therefore being in part responsible for an apparent increase in child pornography and paedophilia. Radio 2GB DJ Phil Clark contrasted those who were worried about the safety of the young girl in the image with "wankers ... [who] walk around with glasses of champagne and call it art" (Marr 2008: 22).

It was in this already-intense climate of outrage regarding the protection of children from sexual predators that Johnston took control of the case against Henson. Just as Henson's supporters decried the attack on the photographer as a "witch-hunt" (Hinkson 2009: 202), some of them took delight in vilifying Johnston, and problematically by association, her cause. Patricia Anderson's passionate defence of Henson offers a range of motivations that could have provoked Johnston's position, including "attention seeking" and "misguided indignation" (Anderson 2008: 95).

Just as Henson's critics such as Johnston reduced their image of the artist to a smug deviate who used art to fly under the radar of the laws that apply to so-called "ordinary" (non-art scene) Australians, so too Henson's defenders relied on near-melodramatic binaries of heroes and villains. Swept up in the intense emotion of the scandal, neither side can frankly claim they kept their head.

THE CASE FOR

As Hinkson has noted, child pornography was always going to have an ethical impact that made Henson's defenders position a difficult one to maintain. In the face of the real abuses against children that have been documented in the press and have burned themselves into the public imagination, arguments about the rights of artists appear inappropriate to many people. Defences that Henson has always made this kind of work or that there is an art historical background to it, in comparison, seem insensitive. Hinkson observed

that supporters of Henson (at least those heard in the media rabble) tended to rely on a number of key terms in their arguments: “Victorian prudery, witch hunts and moral panics” (2009: 202). Anderson again typifies Henson’s supporters’ case for the defence, implying a dismissal of any criticism of his work as philistinism because “it is impossible for the viewer with some grounding in the tradition of Western painting and literature not to overlay a viewing with memories of deposition scenes, morbid medieval northern landscapes, and the nubile body of Donatello’s David” (2008: 95).

That no charges were ultimately laid against Henson suggests that the victory belonged to this side of the debate, but the associations between Henson’s name and the “child pornographer” label have left a deep stain. Once the flames of the initial controversy dissipated, Faulkner is correct in her observation that few lessons were learnt by either side: neither those for nor those against Henson really ever stopped to seriously consider the validity of the opposition’s case (2011: 45).

That being said, the media played a crucial role in this divisiveness, as the scandal provided precisely the fuel that news-making controversy thrives on. In short, the media-fuelled battlelines in the Henson debate were between creative freedom and the importance of the nude in art on one side, and paedophilia, the exploitation of children and issues of consent on the other. What was rarely addressed, argued Brian Simpson (2011), was what Henson’s work itself sought to address: the ambiguity of adolescence. While fiercely fought, the debate was ultimately lame because it did not seriously address the broader anxieties about childhood sexuality. In support of this claim, Simpson observes how distinctly Henson’s supporters avoided this issue completely, and rather adhered to the comparatively less-controversial domain of creative autonomy and the rights of the artist. The decision to ignore the aspects of sexuality that Henson’s work specifically seeks to address is to some degree understandable, as Simpson acknowledges, because of a broader cultural inability to discuss such matters.

Because Henson’s images of nude young people are suggestive of sex and sexuality (rather than being explicitly sexual themselves), they expose anxieties about desire and taboo that underscore adult discomfort with seeing their naked bodies on display. In this way, Henson’s work relies on an uncomfortable set of paradoxes and contradictions, identified by Hayes and Carpenter as follows:

They speak to the sexual potential of young people as well as to the perceived inability of adults to regard naked young bodies as anything but sexual. That adults may recognize the artistic

quality of such photographs is discounted as a mask for what is regarded essentially as a burgeoning and uncontrollable desire that characterizes all adults. The adult gaze cannot but look upon a naked body with desire, regardless of the context. Children must therefore be protected from the adult gaze, for what the adult sees, it covets, and is in danger of appropriating. Children are seen as powerless and unwilling objects of adult desire and appropriation.

(2012: 147)

Hayes and Carpenter break down the assumptions upon which the Henson controversy was based into three specific suppositions (none of which, as Simpson has observed, Henson's supporters sought to explore): children are sexually vulnerable and innocent; adults will always desire naked bodies, regardless of who and in what context those bodies are displayed; and finally, adults cannot be trusted to control these desires. The law, which seeks to protect children from adult sexuality so that children can remain innocent and naïve for as long a period as possible, is based on these assumptions.

Within these assumptions, Hayes and Carpenter identify a fundamental conservative and heteronormative position that treats sex as wrong unless it is for the purpose of procreation and active within the domain of the family. It must also be private, again to protect children. In their defiance of these norms, the young people in Henson's photography are considered to be "corrupted or wronged" because they have been exposed to desire and sexuality at the wrong (not adult) time (Hayes and Carpenter 2012: 148). Put simply, Henson's supporters see his adolescents as subjects, while the outraged public and those who opposed his work view them as (sexualized) objects. As Hayes and Carpenter make explicit,

the assumption that adults are always at risk of acting on their desire means that every adult is guilty until proven innocent. We cannot trust adults to keep their desires in check. Children's bodies must therefore be kept hidden, and children themselves must be safeguarded.

(2012: 148)

Also engaging with the privileging of childhood innocence for purely adult means, Faulkner too sees *Untitled #30* in particular as a difficult image in that it challenges unspoken but intensely and widely held assumptions about the nature of sexual desire. This photograph exposes the vulnerability of youth, and seeks to expose the adult fetishization of childhood innocence. Henson deliberately seeks to make us uncomfortable with our own instinctive fetishistic desires, and calls them into question. For example, Anne Geddes—famed for her kitsch, sentimental baby portraits—ramps up these traditions, while in contrast Henson seeks to strip them away, to challenge and expose them as adult constructions. Geddes work is

implied to exist in a world of positive and healthy adult desire, but one where adults are nonetheless present, placing the children actively in the domain of adult fantasies about childhood. Henson “embarrasses adults’ desire for children by waking us from the dream Geddes exemplifies” (Faulkner 2011:51). *Untitled #30* shatters the dream world of Geddes’ art and exposes it for the adult fantasy that it is: it “brings to issue our everyday use of children, and thereby breaks the illusion that structures contemporary configurations of desire” (Faulkner 2011: 51–52).

CHILDREN’S RIGHTS: PARTICIPATION VS. PROTECTION

One of the key words bandied by both sides of the Henson debate was “rights,” be it the rights of children to be protected from exploitation and harm from adult artists, or the rights of artist to practice unhindered by moralistic tabloid outrages. It was a central point of Johnston’s position against Henson, and she stated on the *Insight* programme:

Adults have always gazumped the rights of children ... In this whole debate—the main point that I’ve been getting to, been trying to—is not about Bill Henson, it’s not about art, it’s not about that, it’s about the industry itself taking responsibility for the potential harm that this could do by way of legislation and protocols.

(“The Naked Eye” 14 June 2008)

Vociferous Henson defender, Patricia Anderson, acknowledges a global climate where the exploitation of children and the loss of their basic rights is a widely debated topic. The current climate has provoked futile, often frenzied responses, making it almost unavoidable that there would be some works of art such as Henson’s that would be “vulnerable to misinterpretation [and] would find themselves in the magnesium glare of the do-gooder’s searchlights” (Anderson 2008: 94).

Sometime after the scandal died down, Hilary Glow and Katya Johanson (2012) used the 2009 “Protocols for Artists Working with Children” report as their starting point to examine the different understandings of children’s rights in Australian arts policy, stating that this fundamentally moralistic report equates the rights of children only with their potential to be exploited by artists. They argue that the moral panic that led to the creation of this report had little to do with children or art practitioners themselves. They strongly urge that not only Australian artists but also children need to be more strongly represented in Australian policy development. Glow and Johanson are not alone in suggesting that the Henson controversy be used to address the emphasis of protective over participatory children’s rights in Australia. Tony Mitchell

(2011) was also outraged that children—particularly teens—were excluded from public debate about the issues raised during the Henson affair, and that adolescents were reduced to the category of children by those purporting to speak in their defence. Kate MacNeill notes that on the few occasions where young people were asked of their opinions of the Henson photographs, their responses were “indignant,” and that they felt it was the model’s “right” or a “choice” she should be allowed to make (MacNeill 2010: 91–92). Brian Simpson (2011) was also critical that in the Australian Senate Committee inquiry into sexualization in the media, released as the Henson affair was unfolding, there was no evidence provided by children or adolescents.¹ Of the Henson controversy itself, Simpson argued that the debates that framed it were more about adults and their views of childhood than children themselves. Critics on either side of the debate were disinterested in granting children participatory rights—it was a debate about children by anxious adults, as similarly argued by Kylie Valentine (2008).

PUBLIC SPACE: THE INVITATION AND THE INTERNET

The tangible artefact that appears to have triggered the Henson controversy was the invitation to the exhibition’s opening. Henson chose this image, telling Marr he was lured to it simply because its vertical formatting was unusual compared to the bulk of his work that was horizontal. Although noting that “I have yet to meet anyone who said they opened the envelope with whole-hearted pleasure,” Marr admits that of the 3500 invitations featuring *Untitled #30* that were sent out, the gallery received only six complaints (2008: 4).

The invitation is crucial in conceptualizing the clashing of different spaces that marked the Henson controversy as it falls somewhere neatly between the public space of the press, governmental and institutional bodies involved and public opinion on one hand, and the Australian art scene on the other. For the latter, the importance of the gallery space itself played a crucial role in the construction of meaning in Henson’s work. As Anderson argues, Henson’s work could not be considered pornographic simply by being in a gallery, this shifts as that work ventures out into other spaces and the integrity granted by the sanctity of the gallery space becomes compromised (2008: 96). Faulkner analyses this through Walter Benjamin’s notion of the aura. Accordingly, the mass circulation and appeal of photography means that “its connection to a material and social history or tradition through which it gleams its ineffable uniqueness” is obliterated (2011: 47). While this aura creates a sense of abstracted distance, the mechanical reproduction of images brings it into the immediate realm of mass circulation. Contemporary gallery spaces seek to create this sense of aura, often through a number of defining rules and regulations regarding correct behav-

iour and recognition of physical boundaries between the spectator and the work. These are, however, “only funereal monuments to art’s aura: the value of art is already hollowed out, leveled by the market, and haunted by the question of authenticity” (Faulkner 2011: 47). Benjamin argues that the aura has shifted to the notion of the spectacle, and the former is now ultimately little more than a highbrow fetish for a self-appointed cultural elite.

Thus the Internet and gallery website become just as crucial as the hardcopy invitation itself. This technology made it extremely easy for the image to be shifted into contexts far beyond that of its original intent. As Faulkner notes, the Internet is a notoriously dangerous domain regarding the exploitation of children, and those on the anti-Henson side argued that paedophiles could easily attain the image from the gallery’s website. At the same time, pro-Henson figures argued that the moral panic was what caused the scandal, whipping up dirty associations where there otherwise were none. Less overt, claims Faulkner, was the fact that both sides shared a similar fascination with context: both sides wanted to provide specific and ultimate meanings, and both wanted to limit its distribution (as pornographic for the former group, and as art—relegated to the physical gallery space—for the latter). The Henson debate relied on the fact that people who may not otherwise have ever seen this image did so solely because of the controversy, and it was this technological reproduction that granted it a whole new life that never would have applied in the aura-heavy domain of the gallery space for which it was intended. Again, Henson’s own personal decision to put that particular image on the invitations was a step towards breaking out of this space.

GENDER, AUTHORSHIP AND PORNOGRAPHY

As discussed earlier, anxieties about child pornography and child sexual abuse were already at fever pitch in mid-2008 in New South Wales. Contextual concerns were also vital in debates about whether *Untitled #30* could or could not be considered child pornography. MacNeill observes that despite the best intentions of Henson’s supporters to distinguish between art and pornography, this was not useful as images of naked children can shift from one category to another depending on their context and—more importantly—the viewer themselves. The act of putting that image on the invitation and online was crucial as it exposed the volatile nature of the image itself. Once it entered the public realm, the credibility of the art system’s boundaries vanished and it entered a more ambiguous space because its definition as art relied on its production, the authorial stamp of the artist and the gallery context. As such, MacNeill notes that the Henson scandal exposed the limitations of the art system in dealing with what happens outside of its borders.

Citing Anna Munster (2008), MacNeill recalls that the presence of the Henson photos on the Internet, effectively the home of child pornography, meant that the context and its meanings become uncontrollable. MacNeill's point here is significant:

Pornography is not so much to be found in any one image, but rather in the collection of images, and it is not the intention of the artist that determines whether an image might be considered pornographic but rather the context within which it is viewed or collected.

(2010: 92)

MacNeill rejected the defence of Henson's work on the grounds that as art it had a specific history and cultural validity that should raise it above such claims, even though she felt the work was not pornographic. According to the art-defence position, it is only the images status as art by a great photographer that defines it as not pornographic, implying that in another context it could have been seen differently. As the image was removed from its original gallery context, she notes it became "unhinged" from the art world, and the arguments from the art scene in retaliation seemed "self-serving and overly defensive" (MacNeill 2010: 83). MacNeill argues that at the core of the Henson controversy was the fact that the art system was unable to contain the images as they spiralled out of their controlled context into public space.

At the heart of debates about *Untitled #30* lay assumptions about a direct link between photographs of naked children and paedophilia. Criminologist Stephen Smallbone from Griffith University noted on *Insight* that there is less of a link between work like Henson's and actual child abuse. He said,

my sense of the public debate is that there is a wide assumption that viewing images of children in a sexual setting is likely to lead to the motivation to sexually abuse a child in a physical sense and I think that assumption is not borne out by the evidence.

(*"The Naked Eye"* 14 June 2008)

On the same programme, Brian Simpson also raises the point that the majority of child sexual abuse occurs within the family, and therefore the diversionary nature of the Henson scandal away from this reality could itself be seen as harmful in its role in the construction of public understandings of how child sexual abuse in fact works.

Henson defenders such as Anderson and Jeff Klooger also argue that the focus on art distracts from much more pervasive social problems. Citing the 2006 research paper by the

Australian Institute think tank into the sexualization of children in the media, Anderson flags their definition of “corporate paedophilia” which attacks a number of large retailers for their sexualized images of young people. Klooger agrees with this, but finds responsibility lies in an even more insidious place:

Children inevitably want to emulate adults. For the same reason they play at cooking or shopping or soldiers, they play at being sexy and engaging in sexually provocative behavior. They do this because this is how they see adults behave, because they perceive that adults regard sexuality as centrally important to attaining the status of adulthood. They do so before they understand what sexuality is or means, before they have any idea what such behavior might lead to or what risks it might involve.

(2009: 87)

Consequently, he argues the only way to counteract the sexualization of children is to treat the root cause: the representation of adult sexuality. Children must not understand sex as sinful or forbidden, and then learn the risks as they get older. Pop culture has myriad pressures associated with sex linking it to success, and the glut of sexual imagery and the dominance of it means that its meaning is in effect trivialized. What Klooger sees as a “simultaneous overemphasis and devaluation of sex” (2009: 88) would require a radical social reconsideration of how sex is represented.

BEYOND BINARIES: GENDER AND ART BEYOND HENSON

The “Us” versus “Them” construction of the Henson debate between the supposedly pro-artist rights and pro-children’s positions did not do justice to the range of complexities that existed in between. In the contentious domain of the pornography debates, MacNeill correctly emphasizes a passing comment on the *Insight* programme that suggested not all women in the Australian art community were passionate defenders of Henson’s work. She notes that most of Henson’s defenders are male and argues that many women are uncomfortable with his work. She recalls journalist Jill Singer’s comment that she knew of a senior art industry official who would not publicly voice her discomfort of Henson’s work for fear of being labelled a religious conservative (MacNeill 2010: 89). Undoubtedly, the gender politics of representation and issues of the commodification of female bodies haunt images of the female nude. This factor made no appearance during the Henson scandal, notes MacNeill, suggesting that like the senior art industry official in Singer’s anecdote, those who were in a position to raise these issues were nervous about being aligned with fundamentalist anti-pornography feminists like Andrea Dworkin and Catharine MacKinnon.

Beyond the “hot” issues that marked the broader social climate at the time, the polemics that governed the Henson case effectively hindered a range of what are arguably equally important and urgent topics for debate: what ideological positions—particularly feminism—did people stake in private about the Henson photographs, but were too frightened of social vilification to air publicly? Why were children and young people forbidden from participating in debates that concerned their very bodies and identities? Additionally, the long-term effects of such scandals must be evaluated in terms of how they influence not only the artists involved but also other artists who witnessed the public outcry. Self-censorship by artists is often a response to the sort of legal persecution faced by artists such as Henson.²

REFERENCES

- Anderson, P. (2008), “Nude or Naked: Bill Henson’s World,” *Quadrant*, 52: 9, pp. 94–98.
- Archer, A. (1998), “Crossing the Fine Line: The Case of Concetta Petrillo,” *Artlink*, September, 18: 3, pp. 54–56.
- Armstrong, C. (1996), “Cupid’s Pencil of Light: Julia Margaret Cameron and the Maternalization of Photography,” *October*, 76, Spring, pp. 115–141.
- Faulkner, J. (2011), “Vulnerability and the Passing of Childhood in Bill Henson: Innocence in the Age of Mechanical Reproduction,” *Parrhesia*, 11, pp. 44–55.
- Glow, H. and Johanson, K. (2012), “The State of Play: Protocols as Children’s Cultural Policy,” *International Journal of Cultural Policy*, 18: 1, pp. 1–12.
- Hall, K. P. (2001), “Teenage Riot: Representations of Adolescence in Contemporary Art,” *Artlink*, 21: 2, pp. 42–47.
- Hayes, S. and Carpenter, B. (2012), “Out of Time: The Moral Temporality of Sex, Crime and Taboo,” *Critical Criminology*, 20: 2, pp. 141–152.
- Hinkson, M. (2009), “Australia’s Bill Henson Scandal: Notes on the New Cultural Attitude to Images,” *Visual Studies*, 24: 3, pp. 202–213.
- Klooger, J. (2009), “Children, Pornography and Sex,” *The Rationalist*, February, pp. 85–88.
- MacNeill, K. (2010), “When Subject Becomes Object: Nakedness, Art and the Public Sphere,” *Media International Australia*, 135, pp. 82–93.
- Marr, D. (2008), *The Henson Case*, Melbourne: Text Publishing.
- Marsh, A. (2003), *The Darkroom: Photography and the Theatre of Desire*, South Yarra: Macmillan.
- Mavor, C. (1995), *Pleasures Taken: Performances of Sexuality and Loss in Victorian Photographs*, Durham and London: Duke University Press.
- Mitchell, T. (2011), “Unacceptable Censorship, or Confusing Adolescence with Childhood: Another Look at the Henson Case,” *SCAN Journal*, 8: 1. <http://scan.net.au/scn/journal/vol8number1/Tony-Mitchell.html>.

- "The Naked Eye" (2008), *Insight*, SBS Television (Australia), 24 June. Transcript: <http://www.sbs.com.au/insight/episode/transcript/22/The-Naked-Eye>.
- Simpson, B. (2011), "Sexualizing the Child: The Strange Case of Bill Henson, His 'Absolutely Revolting' Images and the Law of Childhood Innocence," *Sexualities*, 14, pp. 290–311.
- Sontag, S. (1977), *On Photography*, New York: Farrar, Strauss and Giroux.
- Standing Committee of Environment, Communications and the Arts (2008), "Sexualisation of Children in the Contemporary Media," Commonwealth of Australia. http://www.aph.gov.au/binaries/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf.
- Valentine, K. (June 2008), "Innocence Defiled, Again? The Art of Bill Henson and the Welfare of Children," *Australian Review of Public Affairs*, June. <http://www.australianreview.net/digest/2008/06/valentine.html>.
- Wallace, R. (1990), *The Agony of Lewis Carroll*, Melrose: Gemini Press.
- Wilson, A. (2008), "Bill Henson Furore Brings Back Painful Memories," *The Australian*, 30 May.

NOTES

- 1 http://www.aph.gov.au/binaries/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf.
- 2 See Wilson, A. (2008), "Bill Henson Furore Brings Back Painful Memories," *The Australian*, 30 May; Archer, A. (September 1998), "Crossing the Fine Line: The Case of Concetta Petrillo," *Artlink*, 18: 3, pp. 54–56.

6

***THE SLEEPERS AND
TRAFALGAR SQUARE***

—

Cherine Fahd







PAGE 101

—

Cherine Fahd, *The Sleepers* #4. (2005) videostill.

PAGES 102 / 103

—

Cherine Fahd, *The Sleepers* #15. (2005) videostill.

Cherine Fahd, *The Sleepers* #17. (2005) videostill.

PAGE 105

—

Cherine Fahd, *The Sleepers*. (2005) 1x grid of 20 videostills.







PAGES 106 / 107

—

Cherine Fahd, *Trafalgar Square, Beckett*. (2006). Lambda Photograph.

120 x 138.45cm.

Cherine Fahd, *Trafalgar Square, Opera*. (2006). Lambda Photograph.

120 x 137.52cm.

PAGE 109

—

Cherine Fahd, *Trafalgar Square, Girl in Group*. (2006). Lambda Photograph.

120 x 132.49cm.



**CRIMINALIZING "CAMERA
FIENDS": PHOTOGRAPHY
RESTRICTIONS IN THE AGE OF
DIGITAL REPRODUCTION**

—

Jessica Whyte

In his classic study *Camera Lucida*, Roland Barthes makes a remark that is surely pertinent to any attempt to understand the relation between the photographic image and the concept of privacy: “photography,” he notes, “corresponds precisely with the explosion of the private into the public” (Barthes 1982: 98). As well as drawing attention to the capacity of photography to propel the private into the public realm, Barthes astutely identifies the extent to which its emergence created a “new social value,” which consisted in the publicity, indeed the public consumption, of the private (Standing Committee of Attorneys-General 2005). To extend Barthes’ analysis, it is necessary to note that photography—and the anxieties it generated in both its professional, and more crucially, its amateur forms—did not simply reveal publicly what was formerly private. Rather, it was the combination of technological innovation—which enabled the proliferation of Kodak’s, and so, the democratization of photography—and the distribution of unauthorized images, most significantly that of a teenage girl, generated a pervasive sense of crisis, which formed a key impetus for the development of the modern juridical conception of privacy.

Today, the proliferation of digital cameras, combined with the ease of distribution via the Internet, has generated a new set of anxieties, and new calls for the protection of private life. In recent years, various Australian jurisdictions have introduced laws to restrict unauthorized photography. In the state of Victoria, under legislation pertaining to “surveillance devices,” it is an offence to take photographs of a “private activity” without the consent of the parties involved.¹ New South Wales has introduced laws against “filming for indecent purposes,” which make it an offence to photograph someone “in a state of undress, engaged in a ‘private act’ or in circumstances where a reasonable person would expect privacy” (Standing Committee of Attorneys-General 2005: 17). In South Australia, legislation concerned with child pornography has led to the creation of a new offence where “a person who acting for a prurient purpose makes a photographic, electronic or other record from which the image, or images, of a child engaged in a private act may be reproduced, is guilty of an offence” (Standing Committee of Attorneys-General 2005: 17). Each of these offences hinges on the question of privacy, and can be viewed as an attempt to bolster the realm of the private in the face of the invasions made possible by new photographic technologies and enhanced possibilities for the digital distribution of images.

This chapter therefore focuses on the way in which photography restrictions reconfigure

the border between the public and the private, and thereby transform the conditions for a common life. The question of privacy has played a central role in both the law reform process and in scholarly debate around unauthorized photography and the digital distribution of images.² Contemporary debates around unauthorized photography are informed by the view that the photograph can intrude into private life in a profound manner and may thus constitute a breach of privacy, even if taken in public (Moreham 2006). Such concerns reflect anxieties about the dislocating potential of unauthorized photography and distribution—while people may be prepared to undertake certain activities in public, for instance, sunbathing topless on a public beach, it is argued, this does not imply they are consenting to the creation of a permanent record of such activity, which may be viewed repeatedly outside of its original context.

This problem has led to a call for a new legal concept of the right to “privacy in public” (Nissenbaum 1998). The necessity of such a right was a central concern of a 2005 Australian Standing Committee of Attorneys-Generals’ inquiry, which asked, “whether people should expect privacy in public places, or while engaging in public activities” (Standing Committee of Attorneys-General 2005: 9). Helen Nissenbaum, a key advocate of the affirmative position, notes that to many the “idea that privacy may be violated in public has an oddly paradoxical ring” (1998: 567). This, she suggests, is due to the extent to which our understandings of “privacy,” and of “the public,” are informed by a rigid dichotomy in which the private is associated with the familial, the personal and the intimate, and the public with the civic realm, or with a non-personal understanding of community (1998: 567). The dominance of such a dichotomous understanding, in Nissenbaum’s view, has led to a preoccupation with privacy in *private* spaces at the expense of attempts to formulate a right to privacy in *public*. As long as we cannot expect our privacy to be protected in public, she argues, we remain vulnerable to increasing surveillance in public spaces, which in turn undermines the “conditions for a free society” (1998: 567).

I would like to critically examine the responses to unauthorized photography that have sought to establish a right to privacy in public, and suggest that rather than opening up realms of freedom, such responses may unwittingly further the state’s regulation and normalization of social life. Despite the reassertion of the right to privacy, this chapter will suggest that, today, the border that purports to separate the public from the private is crumbling. While this situation poses many challenges, not least for photographers, I also suggest that it presents opportunities for formulating new modes of thought and common life. Our ability to seize such possibilities, however, will be premised on a critical engagement with the contemporary push for privacy, and a challenge to the further privatization and state regulation

of once-public life that it entails. As the discourse of crisis that surrounds unauthorized photography leads to an increasing criminalization of practices that were once deemed innocuous, we are encouraged to conceptualize ourselves as victims of [photographic] injury. By calling in the state to protect us from such injury, however, the push for photography restrictions obscures the state's capacity to injure, and entrenches new levels of disempowerment and depoliticization. The criminalization of photographers, I suggest here, is an ill-conceived response to a set of anxieties that are as old as the wide-scale accessibility of the camera.

"CAMERA FIENDS": PHOTOGRAPHY AND ANXIETY IN THE 1800s

In order to better understand the historical antecedents to the contemporary convergence of technological innovation, the circulation of unauthorized images and the push for law reform, it will be helpful to turn our attention to the two-year period that separates the invention of the Kodak from the publication of Warren and Brandeis's seminal 1890 essay "The Right to Privacy." This essay is the foundational text of the modern tort of privacy, and is "generally considered by legal scholars to be the single most influential law review article ever written" (Eden 2009: 70). Given this status, it is significant that this essay is, in large part, a response to the view that "[i]nstantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life" (Warren and Brandeis 1890). Just at the time when, in the view of the Justices, the intensity and complexity of modern life had made it more necessary than ever that "'man' be able to enjoy 'some retreat from the world,' modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury" (Warren and Brandeis 1890).

Given their stated concern with protecting the "sacred precincts of private and domestic life," it is noteworthy that the key instance of unauthorized photography referred to in the chapter is one that took place in public—on the stage, no less. In 1890, Marian Manola alleged, in the New York Supreme Court, that she had been "by means of a flash light, photographed surreptitiously and without her consent" while performing on Broadway.³ Manola, whose role required her to wear tights, was ultimately awarded an injunction preventing the sale and distribution of her photograph. Although the case was not officially recorded, and therefore did not provide a legal precedent, it nonetheless played a significant role in the development of privacy law, prompting Warren and Brandeis to comment: "For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of portraits of private persons."

From whence did this feeling arise? In 1888, Kodak's invention of the instant camera prompted fears about so-called "camera fiends," and was followed by the banning of cameras from the Washington Monument, and a number of beaches (Lindsey). An article in the Hartford Courant warned at the time, "the sedate citizen can't indulge in any hilarity without the risk of being caught in the act and having his photograph passed around among his Sunday School children" (Lindsey). As Robert E. Mensel notes, the key cultural consequence of Kodak's invention was a completely transformed conception of who was able to practice photography. No longer the exclusive pursuit of the professional and the affluent amateur, by 1889 the *New York Tribune* was able to report: "Amateur photography is rapidly approaching, if it is has not already reached, the dignity of a 'craze'."⁴

What was particularly threatening about the invention of the Kodak, it seems, is that it opened the possibility for the democratization of the photographic image, and thus transformed the class basis of the practice, as well as transforming the visibility of class itself. In the period prior to the mass accessibility of the camera, the posed portrait had served to re-enforce the bourgeois individualism and interiority that Warren and Brandeis sought to protect. As outlined in the Introduction, photography has a close relationship to processes of bourgeois self-definition. The unauthorized image tended to blur the lines between those included and those excluded from such self-possession, and thus to destabilize the regime of interiority of the bourgeois individual.

For many, it was simply the capture of their image, and the possibility of its sale and circulation, that gave rise to a desire for the legal protection of privacy. Like today, anxieties about the capturing of one's likeness were exacerbated both when this occurred in a place where people had reason to feel particularly exposed, notably the beach, and in cases involving minors and women. The development of privacy, as Osucha suggests, was shaped by "popular anxieties about the commodification and exposure of women in popular culture," concerns directly reflected in today's discourse around unauthorized photography (2009: 76). Mensel cites a letter published in the *Photographic Times and American Photographer*, which complained that "during the bathing hours, a half-dozen cameras may be seen at almost any time, pointed at the half-nude and innocent bathers, at a time when they are not in a position to be perpetuated by the camera" (1991: 33). The 1899 case that "set off an explosion of activity within the New York legal system which ultimately lead to the recognition of a right to privacy," however, was one that involved a photograph of Abigail Roberson—apparently an "exceptionally attractive Rochester teenager"—that was taken without her consent and incorporated into the trademark of the Franklin Mills Company, along with the slogan "flour of the family" (Osucha 2009: 69). Upon discovering that her

image appeared on 25,000 flyers, distributed by the company throughout Rochester, Ms Roberson “suffered a severe nervous shock and was confined to her bed and compelled to employ a physician.”⁵

Significantly, both the Monroe County Court and the Appellate Division court ruled that Roberson’s “right not to be interfered with” had been violated (Mensel 1991: 38). In 1902, however, the state’s highest court overturned the previous rulings, finding that allowing them to stand would lead to an explosion of trivial litigation, and reversing the view of the lower courts that Roberson had suffered a “sentimental injury,” finding that there “is no right, capable of enforcement by process of law, to possess or maintain, without disturbance, any particular condition of feeling” (Mensel 1991: 38). It was, however, the dissenting view that was to prove more influential and the following words from the dissent have an unmistakably contemporary resonance:

Security of person is as necessary as the security of property; and for that complete personal security which will result in the peaceful and wholesome enjoyment of one’s privileges as a member of society there should be afforded protection, not only against the scandalous portraiture and display of one’s features and person, but against the display and use thereof for another’s commercial purposes or gain.

(Twomey 2007: 616)

The New York legislature it seemed shared these sentiments. Outraged by the decision, and greatly influenced by Warren and Brandeis’s essay, the following year, in April 1903, it adopted “[a]n act to prevent the unauthorised use of the name or picture of any person for the purposes of trade” (Twomey 2007: 616; Mensel 1991: 38). After 15 years of the “savage and horrible practices” of the amateur photographers, the first statutory restriction of photography was introduced into law (Mensel 1991: 38).

Central to the development of the modern tort of privacy was the mobilization of a conception of sentimental injury and female vulnerability. Osucha notes that “spectacles of white women in peril saturate the early discourses of media privacy,” which rely on and entrench an existing association of femininity with the private sphere—an association that is in fact central to the “flour of the family” pun that accompanied Roberson’s picture in the advertisement (2009: 73). Early privacy discourses thus sought to counter the democratization of the image enabled by the development of the Kodak through a discourse of injury and protection. As Osucha suggests, this discourse relied on an implicit distinction between two different subject positions, that of the male, rights bearing subject, and “the specifically female

victim of the invasion of privacy”—gendered positions, she adds, which are also defined by assumptions about class and race (2009: 70). It appears privacy is necessary to provide the bourgeois male with a necessary “retreat from the world,” and to protect vulnerable white women from the glare of its lights. In what follows, I both trace the historical precursors of such assumptions, and suggest that they continue to play crucial roles in the contemporary iteration of the panic over the further democratization of photographic devices.

ON “THINGS THAT NEED TO BE HIDDEN”: THE PUBLIC AND THE PRIVATE

While the publicity of the private has a long history, today we are seeing an unprecedented privatization of the public, not only in the form of the private ownership of once state-run industries but also in the restrictions that increasingly govern our activities in once-public spaces. Both of these forms of privatization impact heavily on contemporary photography. Today, photography restrictions are just as likely to be enforced by private security guards as by police; photographers who believe themselves to be in a public spaces—local swimming pools, train stations, shopping strips—may be surprised to find that these spaces are in fact, privately controlled, and subject to regulations prohibiting photography. In light of the push for privacy in public, and the increasing privatization of the public, it is worth reflecting on the history of the rethinking of the public/private dichotomy, in order to enable critical thought about its contemporary status.

Far from being a recent innovation, some form of dichotomy between the public realm—the “realm of appearances” as Hannah Arendt terms it—and the “private” realm can be traced back as far as the Greek polis. Without wishing to erase the historical transformations wrought by the rise of modern individualism and the development of Christianity—some form of distinction between a public and a “private” realm has existed at least since Aristotle’s division of man’s life in the home (oikos) from his public life in the state (polis)—“a division,” Arendt suggests, “upon which all ancient political thought rested as self-evident and axiomatic” (1958: 28). For Aristotle, and numerous thinkers following him, the good life lived in the polis presupposed the rigid exclusion of all those merely “private” concerns—amongst which he included labour, reproduction and health—which were relegated to the sphere of the household. Reflecting on this history can both sharpen our understanding of the philosophical lineage of the terms that are currently mobilized in debates around unauthorized photography and reveal something of their presuppositions and political investments. Further, by doing so, it will become clear that attempts to reinvigorate the public/private distinction must use terms that arose in a social reality that

bears little resemblance to the one to which those terms are expected to apply today.

A central aspect of Aristotle's political thought was the belief that the creation of a realm of freedom presupposed the exclusion of anything related to the biological life of the population. While the free pursuit of the good life in the *polis* presupposed material self-sufficiency and the reproduction of the lives of citizens, this reproduction was not considered political. The good life, Hannah Arendt notes,

was 'good' to the extent that by having mastered the necessities of sheer life, by being freed from labour and work, and by overcoming the innate urge of all living creatures for their own survival, it was no longer bound to the biological life process

(1958: 37)

One consequence of this was that those whose lives were taken up with working to provide for material necessities were not considered fit to be citizens. In his *Politics*, Aristotle remarks that if a state existed "merely to provide a living, "it might be made up of slaves or animals, and that is impossible, because slaves and animals are not free agents and do not participate in well-being" (1942: 28). Slaves and animals (and women), in Aristotle's view, were not able to participate in the good life, but were simply instruments for providing some with the sufficient quality of life it presupposes.

It is to this strict distinction between the household and the *polis* that Arendt traces the division between the private and the public sphere. Her framing of this distinction is useful here. In words that would cause shudders amongst those committed to halting unauthorized photography, she suggests that "everything that appears in public can be seen and heard by everybody and has the widest possible publicity" (1958: 50). The public sphere, according to this view, is necessarily a realm of visibility, as it is dedicated to the creation of a common world. It is precisely in sharing a world with others, she suggests, that we are assured of its reality. In contrast, Arendt understands privacy in its original, *privative* sense, as the deprivation of an objective relation to a common world. "The privation of privacy," she writes, "lies in the absence of others; as far as they are concerned, private man does not appear, and therefore it is as though he did not exist" (1958: 58). The distinction between the private and the public spheres is thus that between "the things that need to be hidden and others that need to be displayed publicly if they are to appear at all" (1958: 72). Amongst the things that needed to be hidden, Arendt includes all those functions that relate to the maintenance of life itself, from labour to reproduction. Given the division of labour, which ensured the ability of some to free themselves of such concerns and live

freely in the public sphere, this veiling of natural life implied the exclusion from the sphere of visibility of those whose lives were devoted to its sustenance. "Women and slaves," Arendt writes, "belonged to the same category, and were hidden away not only because they were somebody else's property but because their life was 'laborious', devoted to bodily functions" (1958: 72).

In contrast to those who would portray the relation of the private and public realms as a zero-sum game, in which the growth of the public sphere correlated to the demise of a private one, Arendt identifies a transformation in modernity whereby *both* the private and public begin to collapse into what she terms "the social." The modern emergence of both the working class and women out of the darkness of the private realm brought about by emancipatory movements, she suggests, signals "an age which no longer believes that bodily functions and material concerns should be hidden" (1958: 59). The social, according to Arendt, is typified by this entry of the maintenance of life into the public realm: "Society," she writes, "is the form in which mutual dependence for the sake of life and nothing else achieves public significance and where the activities connected with sheer survival are permitted to appear in public" (1958: 46). At first sight, it would seem that such a transformation would lead to the expansion of the public sphere. In Arendt's view, however, the opposite is the case, as the public realm can only exist if it coexists with a private realm, and vice versa. "It seems to be in the nature of the relations between the public and the private realms that the final stage of the disappearance of the public realm should be accompanied by the threatened liquidation of the private realm itself," she writes (1958: 61).

The emergence of the social, in Arendt's view, thus signals to the breakdown of the distinction between the public and the private—and so to their mutual abolition. There are a number of crucial consequences of the modern rise of the social as she understands it, two of which are worth treating here. Firstly, as the maintenance of life enters the public sphere, politics is increasingly conceptualized as a means for the protection of that which the ancients had excluded as non-political: natural life itself. This description of modernity mirrors that of Karl Marx, whose "On the Jewish Question" traces the transition by which the increasing public concern with the maintenance of life leads to politics being instrumentalized for its protection. "Political life," Marx writes, "proclaims itself to be a mere *means* whose end is life in civil society"—that is, the life of the non-political, egoistic individual (1843). In the words of the Italian philosopher Giorgio Agamben, "modern democracy," in stark contrast to its classical precursor, "presents itself from the beginning as a vindication and liberation of *zoe* [natural life]" (1998: 9). The breakdown of the public/private distinction, Arendt argues, in a similar vein, sees an increasing politicization of all those areas that

Aristotle had excluded from the *polis*—labour, reproduction, poverty—and the transformation of government into housekeeping, economy and administration (*oikonomia*).

Secondly, this public preoccupation with the maintenance of life, Arendt suggests, leads to a proliferation of rules and regulations in society, “which tend to normalize its members” (1958: 40). Modern power, she suggests, is not, strictly speaking, political, but rather economic, regulatory and normalizing. Those “who did not keep to the rules,” Arendt writes, “could be considered to be asocial or abnormal” (1958: 42). This process of normalization operated not only through proliferating rules, but also through the “behavioural sciences [which] aim to reduce man as a whole, in all his activities, to the level of a conditioned and behaving animal” (1958: 45). Taken together, the increasing concern of the state with the natural life of its population and the normalization of individuals signal, in Arendt’s view, a world in which the disappearance of the distinction between the public and the private realms leads to the disappearance of action and of politics itself.

It is striking the extent to which this depiction of modernity anticipates Michel Foucault’s account of the evolution, in the seventeenth century of a “great bipolar technology” focused on life. In the first of these poles, which he terms *discipline*, power began to concern itself directly with the *body* and its integration into systems of production and efficiency. This disciplinary power, which Foucault analysed in detail in *Discipline and Punish*, was an individualizing power that sought to create “docile bodies,” which were simultaneously more productive and more obedient.⁶ Bentham’s panopticon, which appears regularly in the literature on surveillance and privacy, can better allow us to grasp the specificity of this mode of power, which relies on visibility and operates through techniques of *normalization*. In his 1974–75 Lecture Course at the *Collège de France*, *Abnormal*, Foucault describes the apparatus [*dispositif*] of disciplinary power in terms of a concern with the norm (in opposition to disorder) and the normal (in opposition to the pathological) (44–45). “To what end is this apparatus directed?” he asks. “It is, I think, something that we can call normalisation” (1974–75: 49). Relying on a set of ideas developed by Georges Canguilhem, Foucault describes a process by which the norm comes to found and legitimate a modality of power that does not “exclude and reject,” but qualifies and corrects (1974–75: 49–50). The panopticon, which can be used to transform human behaviour and to “correct individuals,” exemplifies this new concern with visibility and normalization (1974–74: 207).

Biopolitics, in contrast, was concerned not with the individual and her body but with the life of the population—with demography, birth rates, sanitation and various other, previously private, areas of life (Foucault 1990). “For millennia,” he wrote—in what is now a justly

famous contrast—"man remained what he was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question" (Foucault 1990: 143). Foucault traces what he sees as a shift in modernity, at which time, he suggests, the Aristotelian split between natural and political life was abandoned and power began to concern itself directly with the biological life of a population (1990: 137). In *The Politics*, Aristotle had dismissed the view that men's natural lives were a political concern: while the state was concerned with health "to a point"—insomuch as the good life presupposed that men lived and were healthy—"beyond that," he writes, "it is the doctor's business" (1942: 46). In Foucault's view, the eighteenth century, in contrast, saw a new political concern with all of those factors that would influence the health, the vitality and the productivity of the population as a whole; amongst the raft of new biopolitical concerns were demography, natality, public hygiene, insurance, aging and urban planning.

Photography was implicated in this shift in the nature of power. As Osucha notes, photography's early period (the period considered above) coincided with, and was instrumental in consolidating, the "biologization of human difference through the pseudosciences of physiognomy and craniometry and an imminent science of criminal type," and so, along with anxieties about unauthorized images, this period was also one in which the photograph helped to consolidate new forms of biopolitical power (2009: 75).

The combined result of the collapse of the border between the public and the private has been an increasing regulation and normalization of life, as well as the state management of biological life. Does this suggest that this border should be reasserted? Should the increasing proliferation of images encourage us to bolster the private realm, extending it into the public? This is the view of many of those who seek to curtail unauthorized photography today.⁷ Such would also be the view of a thinker like Arendt, whose account of the public/private division is premised on a narrow conception of the political, from which "social" questions, including poverty, labour and reproduction are excluded. This expulsion was necessary, Arendt argued, if the political sphere was to be a realm of freedom. As Rancière has highlighted, Arendt's position rests "on the assumption that modern democracy had been wasted from the very beginning by the 'pity' of the revolutionaries for the poor people" (2004: 298). Indeed, it was this distinction between the political realm as the realm of freedom and the social realm as that of necessity that lead Arendt, in her book on the French and American revolutions, to suggest that it was the entry of the poor, with their "social" demands into the French revolution, that prevented it from establishing a realm of freedom, and that ultimately precipitated the terror.⁸ In the politicization of questions of

poverty, labour and reproduction—and in the valorization of “natural life” at the foundation of rights declarations—Arendt saw a blurring of the distinction between political and natural life, the impingement of necessity on freedom and ultimately the eclipse of politics.

To reassert this rigid division between the private—associated with the familial, the biological and the reproduction of life—and the public as a realm of freedom would therefore mean to renounce all those labour and feminist struggles that have sought to politicize questions of production and reproduction and to break down the naturalization of the [gendered] division of labour. While the assertion that “the personal is political” may have opened ever new areas to state regulation, it has also served to refuse the view that women should be “hidden away” in the private realm, to use Arendt’s phrase. It is also worth questioning whether the photography restrictions will actually lead to greater privacy for individuals. Instead, of extending new enclaves in which the individual can escape the grasp of the state, the push for restrictions on photography in public would seem to further the regulation of public space and the normalization of bodies. Paradoxically, it also leads not to less surveillance but to more, as security guards, police and members of the public are empowered to intervene when faced with a person with a photographic device, which, today, could be almost anyone. Keeping such a conception in mind, we should be wary about the contemporary push for a right to privacy in public as a defence against unauthorized photography. In a context of diminishing opportunities for shared life, and avenues for collective political participation, we should be asking whether the “sentimental harm” caused by unauthorized photography really warrants the defensive attempt to bolster this border through a right to privacy in public. It is to these discourses of harm, and their effects, that the next section turns.

PHOTOGRAPHIC INJURIES

If concerns about privacy in public, in legal scholarship, have crystallized around the question of photography, this is because this literature tends to portray the photograph as bearing a closer existential relation to its subject than other forms of documentation, for instance the written word, and thus as more capable of causing harm. At times, this seems to extend to an assumption that the photograph, is, in a sense, the very “self” of the subject. In her defence of the extension of privacy into public space, “Privacy and Public Places,” N. A. Moreham relies on an idea of photographic immediacy, arguing “unlike a sketch or description a photograph ... enables the observer to see the subject for him or herself” (2006: 614). Andrew McLurg takes this even further. Framing the question of unauthorized photography as one of *control* over one’s body, he argues that the photograph “enables

an observer to, in effect, take a part of the subject with him. [And thus] the victim loses control over an aspect of her self" (1995: 1041). It is eerie to note the extent to which such a view replicates the superstitious anxieties about the camera that were prevalent in the late 1800s.

In a more contemporary parallel, this understanding of the photograph mirrors the radical feminist critique of pornography articulated by Andrea Dworkin and Catherine MacKinnon, for whom a pornographic image is not simply a *representation*, but an *act* of sexual subordination. MacKinnon brutally outlines this position in *Only Words*, by imagining a woman—who seemingly figures as a metonymy for woman in general—who suffers hundreds of years of abuse about which she cannot speak out. "In this thousand years of silence, the camera is invented and pictures are made of you while these things are being done," she writes:

You hear the camera clicking or whirring as you are being hurt, keeping time to the rhythm of your pain. You always know that the pictures are out there somewhere, sold or traded or shown around or just kept in a drawer. In them, what was done to you is immortal ... What he felt as he watched you as he used you is always being done again and lived again and felt again through the pictures ...

MacKinnon presents an all-powerful picture of the pornographic image, and its power to construct women's social reality: "This is women's version of life imitating art: your life as the pornographer's text" (1995: 5).

It is doubtless true that the circulation of pornographic images contributes to shaping the social reality in which women exist, and to fostering particular expectations of sexual relations. Yet, while it may well be possible to do things with pictures, as well as with words, Judith Butler has stressed, in response to MacKinnon, that the interpellation at work in hate speech—which is the frame through which MacKinnon's book views pornography—does not always hit its mark. Although "one might well agree that a good deal of pornography is offensive," she writes, "it does not follow that its offensiveness consists in its putative power to construct (unilaterally, exhaustively) the social reality of what a woman is" (1997: 68). Furthermore, Butler questions the suggestion that the pornographic image has the power to constitute women's reality, by stressing the extent to which it offers "compensatory fantasies" of masculine dominance that serve to highlight not pornography's omnipotence but its failure to reconstitute the world of gender in its own image (1997: 68). This may provide us with another way to think about the phenomena of "upskirting" (taking photo-

graphs up women's skirts), which has led to new criminal offenses (Standing Committee of Attorneys-General 2005: 95). Perhaps, instead of seeing the man who takes photographs up women's skirts with his mobile phone as an all-powerful predator with the capacity to transform us into powerless victims and objects of sexual gratification and thereby reconstitute our social worlds, it may be possible to conceive his as a pathetic attempt to—secretly and privately—reassert some form of sexual power over women who remain oblivious to his very presence.

Just as Dworkin and MacKinnon's re-conceptualization of the image as act was designed to call in the law as protector, the view of the unauthorized photograph as an act of violation is central to the conception of harm that underlies the push towards photography restrictions. This is especially true, as it is argued—in terms that starkly recall MacKinnon's—that digital distribution enables an image to be viewed multiple times and therefore multiplies the original violation. Such a view was also central to the case made by the lawyers acting for Abigail Roberson in the "Flour of the Family" case, who argued that there had been a "theft" of her likeness. The lawyers, Osucha writes, "claimed that the adventurous peregrinations of her commodity image brought on her person a shame and distress as real as if she herself had been sold and circulated in such a way" (2009: 95). The circulation of Roberson's image in "stores, warehouses, saloons, and other public places" was taken as being akin to her own, disreputable, presence in such places (2009: 95).

Questions of shame and distress also played important roles in a case that formed the primary background to the Attorneys-Generals' Inquiry (Standing Committee of Attorneys-General 2005: 95). In February 2002, as mentioned elsewhere in this book, photographs of teenage rowers in Melbourne, Australia, taken without their consent, were posted on a "gay website."⁹ Questions of consent were exacerbated in the debate that subsequently ensued, because of the suggestion that the photographs of the boys had been re-published for the purpose of sexual gratification. According to the SCAG report, the schoolboys involved reported "feelings of anger, a sense of violation, anxiety about going out in public places, feelings of exploitation and invasion of privacy" upon discovering that their photographs had been placed on the website (Standing Committee of Attorneys-General 2005: 12). While the photographs themselves were not sexually explicit, the boys, according to the report, were concerned that older men would view them as sex objects by virtue of the presence of their photographs on a gay site. If, in contrast, photographs had been taken of the boys without their consent to advertise the school's rowing regatta, the report asserts, "no harm to the students is likely to result" (Standing Committee of Attorneys-General 2005: 12).

The account of this event presented in the Attorneys-General report rests on a number of implicit assumptions: firstly, it is assumed that the publication of the photographs on a gay website is inherently harmful. Once this harm is assumed, it follows that the boys are its powerless victims, and, from that, that the state must act to protect them. Furthermore, the assumption is that such protection should take the form of a "right to privacy." If we unpack these assumptions, however, we find that rather than being self-evident, they form a logical chain that serves both to naturalize social prejudices and to re-affirm the role of the state as protector of what Wendy Brown has referred to as "injured subjects" (1995). In the first case, we see resonances of the scandal that ensued when photos of Australian Football League (AFL) players, usually not a group averse to sexual objectification, were published on a site catering to gay AFL fans. While a group of schoolboys cannot be seen to have invited the same attention as professional sportsmen, it is worth noting that this latter "scandal" was similarly framed as a breach of privacy, with the AFL players association dubiously denying it ordered the pictures be taken down because the site was aimed at gay football supporters (*The Age*/AAP 2006).

If we de-naturalize the conception of harm at stake in such a case, we are able to focus more clearly on the implications of conceptualizing unauthorized photography as an injury from which the state must protect us. As Brown has convincingly shown, the notion of vulnerability that underlies such a demand for protection is not without its costs: the "heavy price of institutionalised protection," she writes, "is always a measure of dependence and agreement to abide by the protector's rules" (1995: 169). The consequence of such demands for protection, Brown notes, is to make injury constitutive of subjectivity, and to fix and codify powerlessness and vulnerability (1995: 27). This should lead us to ask whether the media portrayal of the young rowers as victims of sexual exploitation, and the state's rush to offer legal protection, should be viewed simply as responses to an objectively harmful situation. While there is no reason to doubt that the boys did indeed experience feelings of anger and shame, it is worth asking whether the discourse of violation and harm that circulated in the media in response to the case contributed to generating the feelings to which the boys attest.

It may seem that to question the discourse of harm in a case allegedly involving the sexual objectification of teenagers is at best insensitive, and, at worst, may contribute to a climate in which such harm becomes easier to perpetuate. At stake in such a questioning, however, is an attempt to challenge the naturalization of injury that has led to the increasing regulation and criminalization of young people's sexualities, which has had other, dangerous,

ramifications. The dark side of the invitation to conceptualize oneself as a victim and the concomitant normalization and regulation that accompany it have been key features of another controversy concerning teenagers and allegedly sexualized images. In recent years, raids across the United States and Australia have resulted in teenagers being charged with the production and distribution of child pornography for circulating “provocative” images—of themselves!¹⁰ In Australia, this has led to a threefold increase in the number of children and teens charged with child pornography offences over the five years leading up to 2014 (Hunt 2014). Disturbingly, in Australia, those charged with child pornography offences have been as young as 11 years old (Hunt 2014).

The United States has also seen various cases of young people being charged with child pornography offences for producing images of themselves. In one case, a 14-year-old girl and two 15-year-old girls at Pennsylvania’s Greensburg Salem High School were charged with producing child pornography after sending naked or semi-naked pictures of themselves to their boyfriends on their mobile phones (Mieles 2009). The boys—aged 15, 16 and 17—were also charged with receiving child pornography. “It’s very dangerous,” a police spokesman said of the production of such images. “Once it’s on a cell phone, it can be put on the Internet where everybody in the world can get access to that picture. You don’t realize what you’re doing until it’s already done” (Mieles 2009). Whether, in fact, the teens in question did realize what they were doing, and whether they perhaps trusted their boyfriends, foolishly or otherwise, not to upload their images onto the net, is something no one seems to have thought to ask them. Instead, the girls are paradoxically figured both as victims needing the law’s protection and as active agents who must be prevented from producing materials that are dangerous to society. Indeed, the police voiced concerns that if the images were posted on the net, they would have to charge increasingly large numbers of teens with accessing child pornography, as if the girls were responsible for a form of pornographic contagion. Furthermore, the girls’ bodies were implicitly figured as themselves both dangerous and criminal. “If you’re taking pictures,” the police officer warned teens, “make sure the picture is of something that isn’t illegal” (Mieles 2009).

Later that same year, also in Pennsylvania, 16 girls and four boys were threatened with felony charges, carrying lengthy jail time, after their high school confiscated and searched students’ mobile phones. The school called in the District Attorney after discovering 100 photographs that were allegedly pornographic. In order to avoid felony charges, carrying lengthy jail times, the students were given the option of paying a \$100 fine, entering informal guilty pleas that would subject them to six months’ probation and attending ten hour re-education programmes. One of the girls, who appeared in her bathing suit in an image

the District Attorney termed “provocative,” was made to write a report answering questions including, “How did [it] affect the victim? The school? The community?” (Wypijewski 2009: 8). The programme also aimed to re-educate her about “what it means to be a girl in today’s society” (Wypijewski 2009: 8). If the girl in question did not consider herself “the victim” at the time she decided to produce a photograph of herself in her bathing suit, her only hope of avoiding felony charges was to re-conceptualize herself as such. The normalizing power at work in this attempt at re-education seems to proceed from the assumption that “to be a girl in today’s society” is to be a victim whose sexuality must be protected by the state.

Disturbingly, those who would re-educate young women about their socialized gender roles seem also to proceed from the implicit assumption that young women’s bodies are inherently “provocative.” Also “provocative” according to the same DA, was a photograph of two 13-year-old girls lying side by side in thick, white sports bras, one holding a phone to her ear, and the other making a peace sign. When these girls’ parents refused to submit to the re-education programme, the DA moved to prosecute but was blocked by a lawsuit launched by the American Civil Liberties Union. The DA appealed, and the case was expected to last for years (Wypijewski 2009: 8). Finally, in March of 2010, the Third Circuit Court of Appeals ruled that the DA could not charge the girls, because they appeared in the photographs themselves.¹¹ Ironically, as Wypijewski notes, “the perverse law of child pornography” invites us all to think like a paedophile (2009: 8). In doing so, it is necessary to deprive the teenagers in question of any agency over their own bodies, and the ways in which they wish to reveal and conceal them.

Despite the hysteria surrounding these cases, as Wypijewski suggests it is worth remembering that there “is nothing new about teenagers having sex and taking pictures, or indulging in fantasy as a substitute; nothing new about the mixed thrill about having a secret and risking exposure, or sharing that ‘secret’, sometimes clumsily” (Wypijewski 2009: 8). Undoubtedly, the ease of distribution enabled by new technologies creates extra hazards for teens, who may come to regret images that may circulate far further than they had desired. Yet, the other trajectory, which could see teenage displays of sexuality resulting in lengthy jail sentences and teenagers having their names and faces publicly displayed on lists of sex offenders for at least the next decade is hardly an attractive one (Wypijewski 2009: 8). Perhaps we should begin to question whether protecting young people’s privacy from themselves justifies laws that both criminalize them and reinforce their status as powerless victims whose sexual experimentation is too dangerous for the state to turn a blind eye.

Such a codification of powerlessness is also evident in the push for “privacy in public,” where the public realm is implicitly figured as a place of danger and disempowerment, in contrast to the security and empowerment of the private realm. Warren and Brandeis predicated their original advocacy of a right to privacy on the necessity of “some retreat from the world” (1890). This characterization of the private realm as one in which we are more secure and less vulnerable is also implicit in Nissenbaum’s suggestion that it is in “private spheres” that “people are able to control the terms under which they live their lives” (1998: 592). In his strident defence of private life, *Privacy: A Manifesto*, Wolfgang Sofsky figures the private sphere as the “citadel of personal freedom,” adding that “a person is free, who is not attacked” (2007: 31). Sofsky links what he sees as the freedom enabled by the private sphere to what he sees as one of humanity’s most important inventions: the wall. “Behind a wall,” he writes, “the individual can lay down the weapons with which he customarily defends himself against the demands of the public” (2007: 31). It is the wall, Sofsky suggests, that guarantees personal freedom—an idealization of the home as a space of safety and freedom that could not be further from Aristotle’s view that “every household is ruled by its senior member as by a king!” While the latter understanding of the household may no longer be ubiquitous, the defence of the private realm as one in which people lay down their weapons and are free from attack romanticizes the family, obscuring the extent to which the household is anything but a bastion of freedom and safety for many women and children, and overstating the freedom of women and children within many households. This gendering of the private sphere is implicit in Warren and Brandeis’s argument that the “common law has always recognized a man’s house as his castle,” and we should not forget the struggles through which women have sought to publicize and redefine their own roles within these private castles (1890).

While Nissenbaum’s depiction of the private realm as the only one in which people can control the terms of their lives may be a relatively accurate characterization of the paucity of avenues for collectively shaping our lives in a public sphere available today, it nonetheless serves to naturalize such lack of control over public life, foreclosing attempts to re-conceptualize forms of collective self-determination. By framing political problems as individual injuries, we risk legislating away other ways of being in public, fostering atomization and alienation. The image of photographers being questioned by police each time they take out their cameras at the beach, in a shopping centre, or in a public park, bodes ill for the possibilities of a shared public life. While the founding wager of liberalism has always involved trading freedom for security, today we are provided with an image of this security in which we will be “let alone,” only at the expense of inhabiting a regulation-saturated

society over which we can expect no control. In place of an idea of public spaces as spaces in which we share in the production of meaning, and debate the terms of our lives, the assertion of a right to privacy in public threatens to re-frame public life as that from which we flee, into the relative security guaranteed by the state. Furthermore, the depiction of the state as protector against unwanted attention turns our attention away from the state's capacity to harm and from state-sanctioned surveillance in our increasingly panoptic society. In a new iteration of "stranger danger," we are invited to fear the individual "camera fiend" as surveillance cameras follow our every move, and objectified images of women seduce us from every billboard.

In such a context, it is perhaps worth thinking through ways in which the collapse of the border between the public and the private could be productive of new ways of conceptualizing a shared form of life, rather than of defensive protective mechanisms that foster social atomization and retreat. In the work of the Italian philosopher Giorgio Agamben, it is in the very blurring of public and private—inaugurated in modernity and perfected today—that may enable such new forms of life. Unlike Arendt, and many of those engaged in the debate over photography restrictions, Agamben is not interested in resurrecting the classical distinctions between public and private, *polis* and *oikos*. In contrast to Arendt's deeply pessimistic and nostalgic account of modernity, he argues that it is "by starting from this uncertain terrain, from this opaque zone of indistinction" that we must construct a new politics (2005: 139). Perhaps, in attempting to avoid such nostalgic responses, we have something to learn from those teens who are currently facing child pornography charges for circulating "provocative" images of themselves. "It is just possible," as Wypijewski suggests, "that the 15-year-olds are envisioning, however inchoately, a saner world than the one the grown-ups lecturing them have constructed, one where their life chances won't be ruined by a 'compromising' photograph on the Internet" (2009: 8). Perhaps rather than attempting to secure the borders between the public and the private, through ever-greater regulation and criminalization, we should attempt to conceptualize a politics whose premise would be what Walter Benjamin once referred to as "the stretching of frontiers that mirrors the most radiant freedom of thought" (2004: 420).

If we follow Agamben—and indeed Brown—the collapse of the border between the public and the private calls for the creation of new spaces, and of a form of politics and public life that is not predicated on the exclusion of the private. In the work of these thinkers, the opportunities provided by the collapse of the public/private distinction enable a form of politics that thinks beyond the familiar terrain of liberalism. In Agamben's work, it is precisely the blurring of this distinction, that would create a new form of life, no longer split

between its public and its private moments. It may be that there would be less security in such a position. But, as we seek ever-more security, Arendt's reminder that true political action has always lacked guarantees is worth remembering. Perhaps, rather than demonizing the photographer, and seeking to surround ourselves in an armour of privacy each time we step outside, we should be aiming to re-conceptualize the difficult, challenging and often discomforting art of politics. Benjamin's evocation of freedom as a stretching of frontiers, which would transform existence from a private into a collective matter, such that, in his words, "each private attitude or act is permeated by streams of communal life," may not be so much Arendt's dystopia, as the condition of possibility of a new shared life (Benjamin 2004: 419).

REFERENCES

- AAP (2006), "Gay footy pics 'invade privacy'," *The Age* (Melbourne), 29 June. <http://www.theage.com.au/news/afl/gay-site-invades-privacy/2006/06/29/1151174304725.html>.
- Agamben, G. (1998), *Homo Sacer: Sovereign Power and Bare Life* (trans. D. Heller-Roazen), Stanford, CA: Stanford University Press.
- Agamben, G. (2005), *Means Without Ends*, Minneapolis, MN: University of Minnesota Press.
- Arendt, H. (1958), *The Human Condition: A Study Of the Central Dilemmas Facing Modern Man*, Chicago, IL: University of Chicago Press.
- Aristotle (1942), *The Politics* (trans. T. A. Sinclair), Middlesex: Penguin.
- Barthes, R. (1982), *Camera Lucida: Reflections of Photography* (trans. R. Howard), New York: Hill and Wang.
- Benjamin, W. (with Asja Lacis) (2004), "Naples," in M. Bullock and M. W. Jennings (eds), *Walter Benjamin: Selected Writings, Vol. 1 1913–1926*, Cambridge, MA: Harvard University Press.
- Brown, W. (1995), *State of Injury: Power and Freedom in Late Modernity*, Princeton, NJ: Princeton University Press.
- Butler, J. (1997), *Excitable Speech: A Politics of the Performative*, New York: Routledge.
- Foucault, M. (2003), *Abnormal: Lectures at Collège de France 1974–75*, Basingstoke: Palgrave.
- Foucault, M. (1990), *The History of Sexuality, Volume 1: An Introduction* (trans. R. Hurley), New York: Vintage.
- Hunt, N. (2014), "Surge in Children Charged Over Child Porn as more Kids get Involved in Sexting," *Adelaide Advertiser*, 4 February. <http://www.adelaidenow.com.au/news/south-australia/surge-in-children-charged-over-child-porn-as-more-kids-get-involved-in-sexting/story-fni6uo1m-1226817114627>.
- Lindsey, D. "The Kodak Camera Starts a Craze," *PBS.com* <http://www.pbs.org/wgbh/amex/eastman/peopleevents/pande13.html>.
- Ludlow, C. (2006), "'The Gentlest of Predations': Photography and Privacy Law," *Law, Text, Culture*, 10, p. 135.

- MacKinnon, C. (1995), *Only Words*, London: Harper Collins.
- Marx, K. (1844), "On the Jewish Question," *Marxists.org*. <http://www.marxists.org/archive/marx/works/1844/jewish-question/>.
- McClurg, A. J. (1995), "Bringing Privacy Law out of the Closet: A Tort Theory of Liability for Intrusions in Public Places," *North Carolina Law Review*, 73, pp. 989–1088.
- Mensel, R. E. (1991), "Kodakers Lying in Wait: Amateur Photography and the Right to Privacy in New York, 1885–1915," *American Quarterly*, 34, p. 1.
- Mieles, J. (2009), "Greensburg Teens Facing Child Porn Charges For 'Sexting'," *The Pittsburgh Channel*, 13 January. <http://www.thepittsburghchannel.com/news/18469558/detail.html>.
- Moreham, N. A. (2006), "Privacy in Public Spaces," *Cambridge Law Journal*, 65: 3, pp. 606–635.
- Nissenbaum, H. (1998), "Protecting Privacy in an Information Age: The Problem of Privacy in Public," *Law and Philosophy*, 17: 5-6, pp. 559–596.
- Osucha, E. (2009), "The Whiteness of Privacy: Race, Media, Law," *Camera Obscura*, 24: 1, pp. 67–107.
- Rancière, J. (July/August 2009), "Notes On the Photographic Image," *Radical Philosophy*, 156.
- Rancière, J. (2004), "Who is the Subject of Human Rights," *South Atlantic Quarterly*, 2:3, pp. 103.
- Sofsky W. (2007), *Privacy: A Manifesto*, Princeton, NJ: Princeton University Press.
- Sontag, S. (1977), *On Photography*, New York: Picador.
- Standing Committee of Attorneys-General (2005), "Unauthorized Photographs on the Internet and Ancillary Privacy Issues," Attorneys-General Department, Canberra, Australian Government.
- Twomey D. P. (2007), *Labour and Employment Law: Text and Cases*, Ohio: South Western Cengage Learning.
- Warren, S. D. and Brandeis, L. D. (1890), "The Right to Privacy," *Harvard Law Review*, 4, pp. 193–220. http://www-swiss.ai.mit.edu/6805/articles/privacy/Privacy_brand_warr2.html.
- Wypijewski, J. (2009), "Through a Lense Starkly," *The Nation*, 18 May, pp. 6, 8.

NOTES

- 1 "'Private activity' means an activity carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be observed only by themselves, but does not include (a) an activity carried on outside a building; or (b) an activity carried on in any circumstances in which the parties to it ought reasonably to expect that it may be observed by someone else." Standing Committee of Attorneys-General, *Unauthorised Photographs on the Internet*, 16.
- 2 The SCAG Report, for instance, notes: "Notions of privacy and protection of privacy are also central to the issues explored in this discussion paper." However, it concedes that the "meaning of 'privacy' is difficult to define with any precision." Standing Committee of Attorneys-General, *Unauthorised Photographs on the Internet*, 15. See also Moreham N. A. (2006), "Privacy in Public Places," *Cambridge Law Review*, 65: 3, p. 606; Nissenbaum, H. (1998), "Protecting Privacy in an Information Age: The Problem of Privacy in Public," *Law and Philosophy*, 17, p. 567.

- 3 The case was *Marian Manola v Stevens & Myers*, N.Y. Supreme Court, (1890). Cited in Warren and Brandeis "The Right to Privacy."
- 4 My account of the early history of the intersection between amateur photography and privacy in New York is indebted to Robert E. Mensel's excellent essay on the subject. Mensel, R. E. (1991), "Kodakers Lying in Wait: Amateur Photography and the right to Privacy in New York '1885-1915'," *American Quarterly*, 34: 1, p. 28.
- 5 *Roberson v Rochester Folding Box Co.* (1900) 32 Misc. 344, 345 (Special Term, Monroe County) cited in Mensel, "Kodakers Lying in Wait," 37.
- 6 "The human body," Foucault writes, "was entering a machinery of power that explores it, breaks it down and rearranges it." Foucault, M. (1977), *Discipline and Punish: The Birth of the Prison* (p. 138), London: Penguin.
- 7 Nissenbaum, "Protecting Privacy in an Information Age"; Moreham, "Privacy in Public Places"; Ludlow Christa "The Gentlest of Predations" (2006) 10 *Law, Text, Culture* 135; Burton Kelly "Erosion at the Beach: Privacy Rights Not Just Sand" (2006) 3 *Privacy Law and Policy Reporter*, <http://www.austlii.edu.au/au/journals/PLPR/2006/3.html>.
- 8 See Arendt, H. (1990), *On Revolution*, London: Penguin Classics (especially pp. 59-140). The "social question," Arendt writes, "we may better and more simply call the existence of poverty" (60). Poverty, she suggests, is abject because it subjects people absolutely to the power of their bodies, and thus to the power of necessity, which comes to impinge on freedom. "It was under the rule of this necessity," she writes, "that the multitude rushed to the assistance of the French Revolution, inspired it, drove it onward and eventually sent it to its doom, for this was the multitude of the poor. When they appeared on the scene of politics, necessity appeared with them and the result was that the power of the old regime became impotent and the new republic was stillborn; freedom had to be surrendered to necessity, to the urgency of the life process itself" (60). Arendt makes clear the disastrous consequences she sees in the reversal of classical politics, through which the poor enter the political process. "It was necessity, the urgent needs of the people, that unleashed the terror and sent the Revolution to its doom," she writes (60).
- 9 The Attorneys-General report reads: "Shortly after the media coverage, the website in question advised that it had been shut down and that the site and pictures would not be relocated. The webmaster claimed that the site was never a 'gay website' (as claimed in the press), and that the adult links had been placed on the site by hackers. Despite those assurances, a similar new site featuring photographs of young rowers and sportsmen appeared soon after, although this time there was a fee payable in order to access the photographs." Standing Committee of Attorneys-General, *Unauthorised Photographs on the Internet*, 5.
- 10 Joann Wypijewski notes that "Prosecutors have gone after teens in at least Ohio, Wisconsin, Florida, Oklahoma and Pennsylvania. School and police investigators in many states have searched students' phones." She reports that the National Campaign to Prevent Teen and Unplanned Pregnancy has "es-

estimated that one in five teenagers is taking and sending nude or seminude pictures of themselves, and four in ten are sending sexed-up text messages,” and suggests that teenagers are likely to be exposed to increased surveillance, or worse. Wypijewski Joann “Through a Lense Starkly,” *The Nation*, 18 May 2009, p. 8.

- 11 ACLU, Miller et al. vs. Skumanick, <http://www.aclupa.org/our-work/legal/legaldocket/milleretalvskumanick/>.


8

***IN THE EVENT OF
AMNESIA THE CITY
WILL RECALL***

—

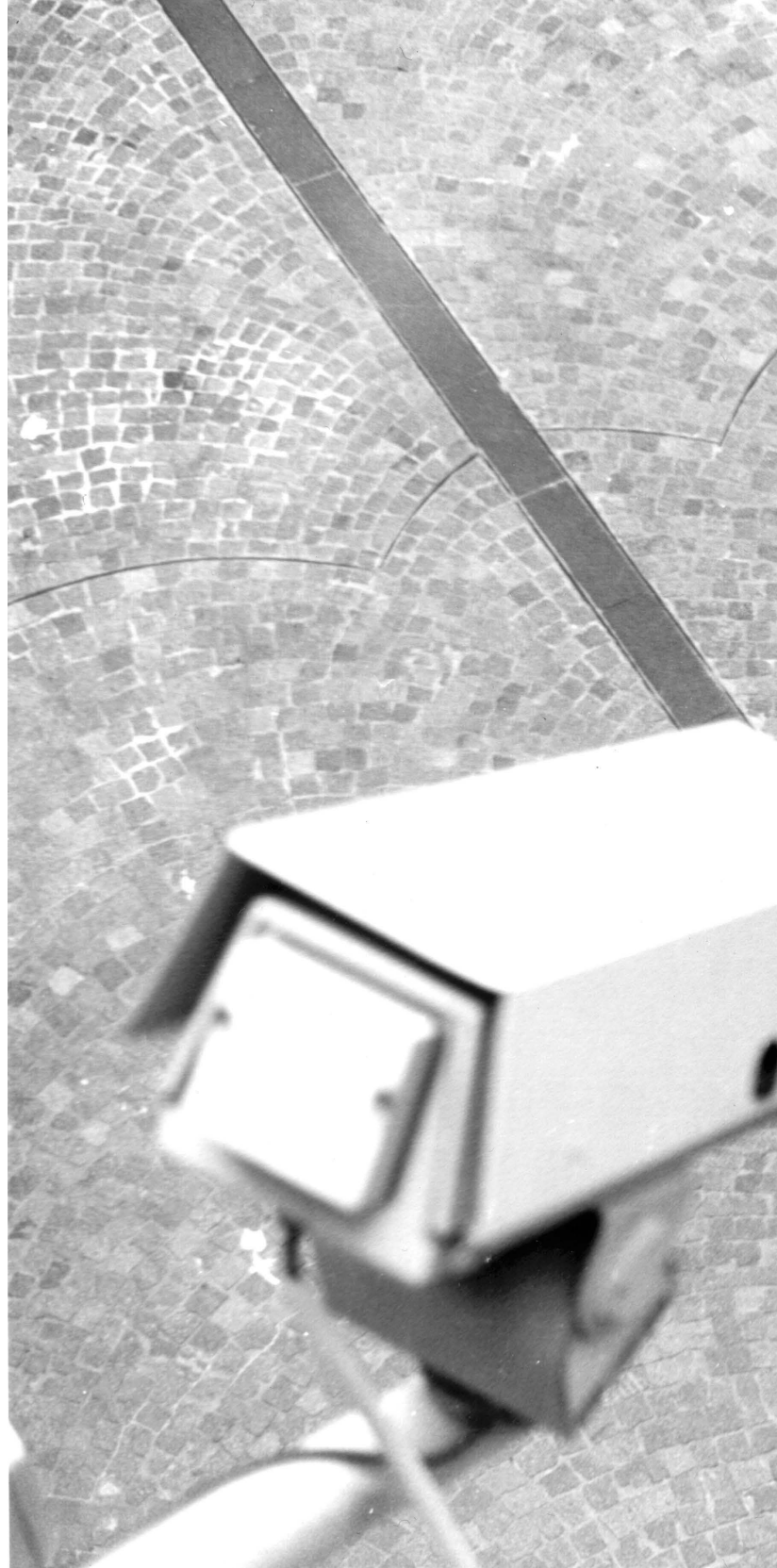
Denis Beaubois



A black and white photograph of a person holding a rectangular sign. The person is wearing a dark jacket and is holding the sign with both hands. The sign is white with black text. The text on the sign reads: "WARNING YOU MAY BE PHOTOGRAPHED READING THIS SIGN". The background is dark and out of focus.

WARNING
YOU MAY BE
PHOTOGRAPHED
READING THIS
SIGN







WARNING
YOU MAY BE
PHOTOGRAPHED
READING THIS
SIGN

A black and white photograph of a person's torso and hands holding a white rectangular sign. The person is wearing a dark, buttoned jacket. The sign has the text "May I have a copy of the video footage?" printed in a bold, sans-serif font. The background is dark and out of focus.

**May I have a
copy of the
video
footage?**



PAGES 135 – 143

Denis Beaubois from *In the Event of Amnesia the City will Recall*

Sydney program. Performance / Video. (1996/1997). Photography by D V Rogers

© Denis Beaubois (1997).



9

THE FACE IN DIGITAL SPACE

—

Martyn Jolly

That configuration of eyes, nose and mouth stuck to the front of our heads, which we call the face, not only connects the outer sociological self to the inner psychological self—the old “window on the soul” idea—but it also connects one person to another in a relationship. For the philosopher Emmanuel Levinas, the face was the place of authentic encounter between self and other: “The face opens the primordial discourse whose first word is obligation” (Levinas 1979: 210). According to Levinas, when two faces face each other, each demands something from the other, even if it is only recognition. It is the power of ideas such as this that still underpin controversies around the role of the face in public places of social interaction. For instance, the debates around recent attempts by various European governments to ban the *burqa* and the *niqab* in public place the face at the very centre of contemporary definitions of personal autonomy and public citizenship (Chesler 2010).

In order to perform this social function of human interaction the face has to be abstracted away from the body so that it can enter into a system of semiotic exchange. Deleuze and Guattari (1988) called this “faciality,” a process that over-codes the organism of the body with other strata of signification and subjectification. To them, the face is an abstract machine of “black holes in a white wall”—a technology increasingly becoming enmeshed with other technologies.

FACIAL HISTORY

In many ways this process of abstraction and “over-coding” begins much earlier, with John Caspar Lavater’s popular *Essays on Physiognomy* from the 1770s. Lavater defined his new science of physiognomy as the “the science ... of the correspondence between the external and the internal man, the visible superficies and the invisible contents” (Lavater 1885: 11). He established that correspondence by either visual analogy, where a bovine-looking person must exhibit dull, bovine personal characteristics, or by biometric algorithms, where the slope of a brow, for instance, indexed cranial capacity and thus intelligence. A brow at a high angle above the nose was the mathematical index of a large brain, but also the visual equivalent of Roman nobility. A brow at a low angle indicated a small brain, and was also literally simian. Lavater’s algorithmic vectorization and analogical mapping allowed him to compare and classify faces, but they also removed the face from the ranks of the purely human, and placed it into an abstracted morphing space that was also shared by animals.

Plate 80 of his *Essays on Physiognomy* demonstrates this with startling clarity as Lavater's illustrator morphs a drawing of a frog's face through 12 separate frames. In the first frame, the angles of the isosceles triangle between the frog's eyes and its lips are, Lavater tells us, just 25 degrees. Frame by frame the frog's eyes slowly become more almond-shaped and the whole face lengthens until, by the final frame, we find ourselves looking into the face of an androgynous human. The angle between the eyes and lips of this face has now increased to 56 degrees, a facial angle shared, according to Lavater, by Aristotle, Pitt, Frederick the Great and Apollo (497) (see online gallery).¹

Eighty years later Charles Darwin completed the project of placing the human face within the realm of animals with his development of the theory of evolution. In his wildly popular follow-up book of 1872, *The Expression of the Emotions in Man and Animals*, he homed in on the mechanics of the face and established that human facial expression was an instinctual animal behaviour, rather than a social language (Darwin 1872). He demonstrated the automatic, biological mechanics of expression by artificially decoupling the external hydraulics of the facial muscles from their usual inner, instinctual motivations. For instance, for plate seven he obtained from the French scientist Dr Duchene a photograph of the facial muscles of an intellectually impaired man being twitched into the expression of "horror and agony" by the external application of the terminals of a galvanic battery. He then juxtaposed this with a photograph he had commissioned of the photographer Oscar Rejlander acting out exactly the same expression. He photographically proved that muscles could be manipulating by two entirely separate methods—electricity and pantomime—to produce exactly the same expression. In this plate Darwin demonstrated that the face lay on top of the self, the face alone, without the self, could enter the plane of abstracted analysis and comparison (see online gallery).

Lavater's physiognomic analogs and algorithms, and Darwin's muscular decoupling, had the effect of conceptually delaminating the face from the body. But it was photography that then circulated that face within society. The greatest celebrity of Victorian England was the royal courtesan, partygoer, actress, beauty and endorser of Pears Soap, Lillie Langtry. Through photography her face left the realm of her body and entered other media spaces. In Victorian England the most lubricious place where newly mobilized images bumped up against each other was the stationer's shop window, and Lillie's photographs were right in the middle of every window, disturbing the pre-existing social order. A writer at the time commented on:

... that democratic disregard of rank which prevails in our National Portrait Gallery of the

present day—the stationer’s shop window—where such discordant elements of the social fabric as Lord Napier and Lillie Langtry ... rub shoulders jarringly.

(Ewing 2008: 22)

Langtry was also the very first person in the world to find herself in a photographic feed-back loop, that is, to feel the effects of her photographed face, as it circulated through Victorian visual culture, reflecting back on to her actual body. In her autobiography, *The Days I Knew*, she recalled:

Photography was now making great strides, and pictures of well-known people had begun to be exhibited for sale. The photographers, one and all, besought me to sit. Presently, my portraits were in every shop-window, with trying results, for they made the public so familiar with my features that wherever I went—to theatres, picture galleries, shops—I was actually mobbed. Thus the photographs gave fresh stimulus to a condition which I had unconsciously created. One night, at a large reception at Lady Jersey’s, many of the guests stood on chairs to obtain a better view of me, and I could not help but hear their audible comments on my appearance as I passed down the drawing-room. Itinerant vendors sold cards about the streets with my portrait ingeniously concealed, shouting “The Jersey Lily, the puzzle is to find her.”

(Langtry 1925: 40)

FACIAL VELOCITY

In the subsequent 130 years the velocity of that photographic circulation has only increased in speed and brutality. And now it is not just the mega-famous who find themselves caught up in photographic feedback loops. Erno Nussenzweig has become the chief exemplar of the ever-present possibility that any one of us can suddenly become an accidental celebrity. One day in 1999 this elderly, bearded, orthodox Jewish man innocently emerged onto the sidewalk from a subway at Times Square. It wasn’t until five years later that he discovered that at that decisive moment he had been photographed by Philip-Lorca diCorcia who had set up a bank of flashlights on scaffolding to capture random passers-by as they came into his camera’s plane of focus. diCorcia had exhibited the portrait at the prestigious Pace/McGill Gallery, published it in a book called *Heads*, sold out its edition of ten prints at between \$20,000 and \$30,000 dollars each and had eventually won London’s prestigious Citibank Prize with it. Nussenzweig sued for \$1.6 million dollars claiming the photographer had used his face for purposes of trade, as well as violated his religious beliefs. His lawyer, Jay Golding, put his case best succinctly to the *New York Post* who, in their report “What’s a picture worth—he wants 1.6 Mil,” quoted him as saying: “It’s a

beautiful picture. But why should this guy make money off of your face?" (Hafetz 2005: 23). diCorcia's lawyer, however, was able to convince the judge that the photographs were taken primarily for the purpose of artistic expression, not commerce, and were therefore protected by the First Amendment.

Or consider the case of Neda Soltan. In 2009 she was videoed by the mobile phones of three separate pro-democracy demonstrators in Iran as she lay dying from a government-sniper's bullet. After the videos went viral on the Internet her face was even turned into a mask and worn by pro-democracy demonstrators at a protest in Paris (Wikipedia "Death of Neda Agha-Soltan" 2013). Meanwhile, in the hours after her death, some eager journalists mistakenly harvested a photograph of another Iranian woman with a similar name, Neda Soltani, from her Facebook page. It was this face that was used in many improvised shrines to the other, assassinated Neda. Iranian authorities then began to harass Soltani in order to get her to cooperate with them in claiming that the original murder had been a set-up by the western media. After 12 days of harassment the other Neda was forced to flee Iran and seek refuge in Germany, from where she wrote a book about her experience, *My Stolen Face* (Soltani 2012).

Or put yourself in the shoes of Nicole McCabe, an Australian citizen living in Jerusalem and pregnant with her first child. She also had her photograph harvested from Facebook. In 2010 the Israeli Government had stolen McCabe's identity for a Mossad agent to use in order to assassinate a Hamas official. When the story broke and the passports the Israelis had forged were circulated in the media, complete with their actual passport numbers, Nicole McCabe decided she did not want to talk to Australian journalists, or be photographed by them. But after having the door slammed on them by McCabe's angry husband, the journalists simply sourced photographs of her from Facebook, where friends had posted her wedding photographs. Nicole said she felt:

... sick, angry, embarrassed and upset ... even if Facebook is public, they have no right to take what they want without asking. I was more determined than ever not to let anyone take a photo of me.

(Media Watch 2010)

Or consider the fate of the footballer Sonny Bill Williams. In 2007, he embarked on an afternoon drinking session at the Clovelly Hotel with his teammates and a group of football groupies that included celebrity iron woman Candice Falzon. Later that night one Clovelly local got a message on his phone. The local reported: "It said Candice Falzon had fol-

lowed Sonny Bill into the toilets upstairs at the pub and everyone knew about it. The next message I got was an ... um ... action shot.” The shot, taken by putting a mobile phone under the toilet door as William and Falzon had sex, was soon being widely circulated amongst the mobile phones of Clovelly, and when it was eventually published on *The Daily Telegraph’s* website it attracted a record number of hits. Williams reportedly had to spend all the following morning buying up copies of newspapers in his area in a futile attempt to stop his girlfriend learning of his toilet tryst. Although the person who took the photograph could have been liable for two years jail under the summary offences act for taking lewd photographs in toilets and change rooms, the newspaper itself could not be successfully prosecuted for posting the photograph once it was taken (*The Daily Telegraph* 2007).

Incidents such as this show that faces do not just have features, they also have velocities. The more famous you are, the more recognizable you are to more people, but also the faster your face is circulated in the media. Even if you are not famous, a lightning bolt of sudden celebrity can dramatically, though temporarily, catapult your face into higher strata of recognizability, which propels exchange at a faster velocity.

While some have felt themselves suddenly swept up into these currents of facial velocity, others have attempted, with mixed success, to ride those turbulent currents to even greater fame. Consider the career of Lara Bingle. Once an ordinary bikini model, her celebrity stocks rose in 2006 when she was chosen for a tourism campaign. The Australian men’s magazine *Zoo Weekly* then published revealing photographs of her that had been taken 11 months earlier, before she was chosen to be the wholesome face of Australia, on which they superimposed sexually suggestive speech bubbles. She sued the magazine for defamation. She won the case when the judge accepted that the magazine was smutty and had implied that she had willingly consented to pose for the sexual titillation of its readers (*Sydney Morning Herald* 2006a, 2006b). However, by the end of 2006 the tourism campaign had flopped, and Bingle was having an illicit affair with the married footballer Brendan Fevola. But by 2008 her stocks had risen again, she was engaged to the cricketer Michael Clark, and they were one of Sydney’s foremost celebrity couples, even endorsing an energy drink. By early 2010 she had even signed up with celebrity agent Mark Marxson. But then *Woman’s Day* published a mobile-phone photograph her ex-lover Brendan Fevola had taken of her in the shower back in 2006, which his football mates had been circulating between their mobile phones for some time (see online gallery). Her engagement with Michael Clark broke down and the energy drink company dropped them. Marxson threatened to “strike a blow for women’s rights” by getting her to sue Fevola, but she did not have a case because, unlike in the *Zoo Weekly* case, no specific laws of defamation

were broken (Byrne 2010). Bingle's stocks in the celebrity marketplace plummeted but, after a period of careful career management including charity work, family-friendly television appearances, and the avoidance of footballers, they began to rise again. They rose so far that by 2012 she successfully negotiated with a TV production company to become the subject of a "reality" TV series *Being Lara Bingle* on a commercial television network. Conveniently, just before the premiere was about to air, another controversy erupted when she was supposedly photographed surreptitiously by the famous paparazzi Darryn Lyons (who was in fact a business partner of Bingle's) standing nude near the window of the Bondi flat that had been rented for the show. This confected "invasion of privacy" allowed her to tell breakfast radio that: "There should be a law against someone shooting inside your house ... it's just not right," thus garnering pre-publicity for the series, and conveniently forming the content of the first episode. Although that first TV episode rated highly, subsequent episodes in the series steadily lost viewers, to the point where Bingle's career languished once more (O'Brien 2012). Bingle then climbed back in the celebrity news cycle after she began to date the *Avatar* actor Sam Worthington, reportedly introducing him to the use of social media platforms such as Instagram. In February 2014, the couple suddenly hit the celebrity gossip headlines when Worthington was arrested in New York for allegedly assaulting a photographer who had allegedly kicked Bingle in the shin (Clun 2014).

The camera has ruled Bingle's career as someone defined by our desire to look at her, but this has been the case ever since Lillie Langtry. However, the roller coaster ride of Bingle's value as a bankable celebrity has also been ruled by the sudden eruptions or irruptions, whether planned or not, "authorized" or not, of particular recognizable photographs that re-attach the "face" of Bingle to the "brand" of Bingle in different ways. The speed of their circulation through both social and mainstream media creates the volatility of the market for her images. Celebrities are sometimes even forced to engage in this market directly. For example, in 2013, the TV and radio presenter Chrissie Swan, who had acquired her celebrity status dispensing homespun wisdom to ordinary women, was photographed smoking whilst she was pregnant, something she herself had campaigned against. So that they could never be published, she engaged in a bidding war with two magazines for the photographs, eventually pulling out after offering \$53,000, \$2,000 less than the winning bid by *Woman's Day* (news.com.au 2013).

FACIAL VECTORIZATION

These examples indicate the high speed of facial velocity. But what of facial vectorization? The terrain of the face continues to be the site of scientific research that updates Lavater's

and Darwin's pioneering efforts and re-affirms the face's muscular mechanics as central to our humanity—although now not by indexing some immutable inner person as Lavater had supposed, but through their intrinsic role within language comprehension. Contemporary cognitive psychologists, such as Professor Rolf Zwaan from Erasmus University Rotterdam, are researching the ways that facial muscle-movement directly feedbacks to the brain. For example, experiments have shown that if you are smiling, you can read sentences about emotions quicker than if you are frowning; and if you have had Botox you have more difficulty interpreting photographic portraits of emotions because in conversation your facial muscles subtly enter into a feedback loop of micro-mimicry with your interlocutor, which Botox decouples (Lingua Franca 2011; White 2011; Zwaan 2013). Other experiments suggest that if you are in the presence of the representation of a face, your moral standards are higher (Bourrat, Baumard and McKay 2011; Smith 2011).

While these examples of cognitive research indicate that the face as a concept remains central to discourses of the human, individual faces are also increasingly caught up in ever-finer meshes of delamination, vectorization and mobilization. For instance, plastic surgery is moving down the social scale from being the prerogative of the famous and the fatuous, to being a commonplace conventional practice for all of us. "Extreme makeovers" are increasingly re-mapping everyday faces, and recalibrating with the scalpel the vectoral angles between eyes, noses and chins in order to ratchet their owners up in scales of beauty.

If the facial structure itself can be morphed through surgery, in other instances the facial pixel maps representing the person can be manipulated. The regular photoshopping of celebrity portraits in our magazines simply replicates in two dimensions the effects of the cosmetic surgeon's scalpel, and the amount of pixelated deviation away from the "truth" can even be algorithmically calculated and given a value (Fahid, Kee 2011). Photoshop can also be used to disguise faces. Consider the case of Christopher Paul Neil who liked to post pictures of himself sexually abusing Vietnamese and Cambodian children on paedophile websites. He applied a swirl filter to his face to disguise his identity, but German police simply applied the same filter in reverse and unswirled the pattern and revealed his face (see online gallery). Interpol then posted the image on their website where he was recognized by five different people and identified. After his face was picked up by a surveillance camera at Bangkok Airport he was eventually arrested in October 2007 (*Daily Mail* 2007; Wikipedia "Christopher Paul Neil" 2013).

Neil was recognized by a human being, but the technological possibility exists that eventually his face could have been recognized by a machine. Facial recognition software applies

algorithms to the same sets of vectors between eyes, nose and mouth that Lavater originally identified. Australia is at the forefront of facial recognition research. In this country, they have not only already introduced “smart gates” at airports to match facial algorithms with a database, but National ICT Australia (NICTA) received \$1.5AUD million dollars from the Cabinet to research what it describes on their website as the “holy grail” of surveillance: “real-time face-in-the-crowd recognition technology” (Advanced Surveillance Project 2013; Bigdeli, Lovell and Mau 2011a, b, c). Concurrent with these Australian research projects, international protocols are also being developed. For instance the US Department of Commerce’s National Institute of Standards and Technology hosted the Face Recognition Grand Challenge open to entrants from industry, universities and research institutes. This means that:

The surveillance industry is currently undergoing the same revolutionary changes that shook up the computer industry when internet use took off in the 1990s. Instead of each supplier providing a unique product, the sector will soon be dominated by standards and interoperability. Surveillance will eventually merge into a virtually seamless multimedia network embracing social media, location services, mobile devices, maps, and 3D models.

(Bigdeli, Lovell and Mau 2011c)

However even though technology is yet to actually deliver on its promises, the idea of facial recognition and facial manipulation has already become commonplace in the media, and almost domesticated. For several years it has been something we can all indulge in as a kind of game. A whole class of smart phone apps are based on face recognition software. We can also apply face recognition algorithms to the vast reservoirs of faces on the Internet, or on Facebook, or in our iPhoto libraries, in order to locate friends we are looking for even when the metadata tags are not available; or to look for celebrities; or to calculate how much we look like a celebrity or to calculate which of our children most looks like us. Many new cameras also have face recognition software built in which recognizes, automatically focuses on, and tags, particular people even before the shutter is clicked.

In a way of thinking about the face that is very similar to Lavater’s and Darwin’s, the frontier of contemporary 3D computer animation is the mapping of actual micro-muscular movements onto animated wire-frames. The most famous example of this so far has occurred in the movie *Avatar* (James Cameron, 2009) where actors (including Sam Worthington) wore head-rigs that filmed the movement of motion-tracking markers on their faces. This digital information was then “peeled” off the actor’s face and re-applied to a 3D animation wire-frame model. The use of the same rigs on the actor Andy Serkis for the movie *Rise of the*

Planet of the Apes (Rupert Wyatt, 2011) finally placed the human face and its expressions in the realm as animals, as imagined by Lavater 230 years ago (see online gallery). Significantly, this technology has also become domesticated in online games such as McDonald's website *Avartize Yourself*. Other games take forensic "age progression" software used by missing-persons bureaus, and turn them into games such as the iPhone app *Hourface*.

FACIAL PRIVATIZATION

Why is it worthwhile looking so closely at tabloid trash and trivial online games? Because as much as high-end cutting-edge research, they are the symptoms of two new tendencies in the valency of the face. Firstly, we are all becoming celebrities, at least potentially. The velocity of our own faces can suddenly speed up when we least expect it. Secondly, our faces are all part of what NICTA calls a "virtually seamless multimedia environment" (Bigdeli, Lovell and Mau 2011c). This is not just analogical space, the bit-mapping and point-by-point comparison of appearances, but algorithmic space, where faces are vectorized and turned into equations that can instantly interact with a myriad of other equations. The pervasiveness of celebrity culture, combined with the explosion of algorithmic biometrics within merging media and data spaces, has had a profound effect upon the ways in which every one of us regards our own face. The face is congealing as a bastion from which to advance privacy rights and proclaim property rights.

There has been a consistent and inexorable drift in legal opinion in Australia towards a tort of privacy—which we currently do not have—that is ultimately focused on protecting the human face. In 2001, Justice John Dowd was able to confidently claim that a person "does not have a right not to be photographed." But by 2003, Justice Michael Kirby was commenting that extending the law in Australia to protect the "honour, reputation and personal privacy of individuals" would be consistent with international developments in human rights law (Nemeth 2012).

By 2008 Professor David Weisbot, president of the Australian Law Reform Commission, was saying that during their inquiry into privacy law, the ALRC had:

... consistently heard strong support for the enactment of a statutory cause of action for serious invasion of privacy. While the debate overseas has focused on the activities of paparazzi photographers, interestingly, most of the concerns expressed to the ALRC related more to the private sphere than the mainstream media—and to the protection of ordinary citizens rather than celebrities. People are extremely concerned about new technology and the ease with which

their private personal images may be captured and disseminated.

(Australian Law Reform Commission 2008)

In their recommendations the ALRC called for “a private cause of action where an individual has suffered a serious invasion of privacy, in circumstances in which the person had a reasonable expectation of privacy” (2008). In 2011, the NSW Law Reform Commission agreed, releasing draft laws that stated that an invasion of privacy should exist where a person “has a reasonable expectation of privacy,” which could potentially even include a public place (New South Wales Law Reform Commission 2010; Marr 2009).

So why this paradox? Why—when our personal information is flowing more freely than ever before, when 80% of people want CCTV cameras in their public spaces and when the vast majority of Facebook users are happy to use its default settings where there is little or no privacy at all—are we getting increasingly paranoid about our faces? I argue it is because the face is caught up in a wider transformation. It is swimming against the tide that is pulling the private into the public because it is part of a stronger current, from signification to possession. Those of us feeling the effects of both celebrity culture and algorithmic data-media are regarding privacy less as a singular inherent right, and more as a fungible personal commodity that can be exchanged in a market place. For instance Nicole McCabe knew her participation in Facebook was not free, she knew she had “sold” it some of her privacy in order to enjoy its benefits, but suddenly and unexpectedly she came to realize that perhaps she had “traded off” too much of her privacy. This mercantile logic is also beginning to pervade other environments of facial interaction, such as public places. Within the politics of the face the receding sense of the *private*, in the sense of the “the discreet,” is being overtaken by an encroaching sense of the *privatized*, in the sense of “the owned.” We all increasingly agree implicitly with Nussenzweig’s lawyer: “why should this guy make money off of your face?”

The abstraction, delamination and mobilization of the face have led to its reification. The face is closing down on the sense of openly mutual obligation that, in Levinas’s terms, once arose when one face faced another, and is replacing it with a sense of commercial enclosure. This reification is intensified by the way that all faces, even our own, can be peeled away from our bodies to enter new virtual and algorithmic spaces. Celebrities are merely at the vanguard of this transformation. Celebrities believe they are their own commodity. They believe that their face is the result of their labour and their talent. It is their capital, their brand, their corporate logo. The velocity with which their face travels through the networks of the media is what determines their value as a celebrity. They believe they

therefore have a proprietary right in it. In America their faces are even protected by a common law, “right of publicity,” which grants them, in the words of one key judgement, “the exclusive right to control the commercial value and exploitation of [their] name, picture, likeness or personality” (Wikipedia, “Personality Rights” 2013). And, just like them, we ordinary people also feel that our own faces are also becoming more monologic, less a window or an interface, and more a logo for “Brand Me.” That configuration of eyes, nose and mouth stuck to the front of our heads, which we call the face, is now not so much a portal to the inner self, or a species of physiognomic autobiography, or an interface to our fellow citizens, as much as a rebus of identity, or perhaps a corporate logo for the persona. It is clear that laws of privacy, photography and reproduction will eventually be changed to confirm for everybody what has already happened in facial valency to a select few. They will come to protect not only the integrity of the personal autonomy and public citizenship of the individual as accessed through the face, but also the value of the face itself—as an individual’s property.

REFERENCES

- Australian Law Reform Commission (2008), “For Your Information: Australian Privacy Law and Practice (ALRC Report 108),” <http://www.alrc.gov.au/publications/report-108>. Accessed 31 January 2013.
- Bigdeli, A., Lovell, B. and Mau, S. (2011a), “You, Yes You: Welcome to the World of Advanced Surveillance,” *The Conversation*, 23 May. <http://theconversation.edu.au/>. Accessed 31 January 2013.
- Bigdeli, A., Lovell, B. and Mau, S. (2011b), “Something to Watch Over Me: Policing our National Borders,” *The Conversation*, 26 May. <http://theconversation.edu.au/>. Accessed 31 January 2013.
- Bigdeli, A., Lovell, B. and Mau, S. (2011c), “All-Seeing Eye: The Future of Surveillance and Social Media,” *The Conversation*, 27 May. <http://theconversation.edu.au/>. Accessed 31 January 2013.
- Bourrat, P., Baumard, N. and McKay, R. (2011), “Surveillance Cues Enhance Moral Condemnation,” *Evolutionary Psychology*, 9: 2, pp. 193–199.
- Byrne, L. (2010), “Lara Bingle to Sue Brendan Fevola Over Nude Photo,” *Herald Sun*, 2 March. <http://www.heraldsun.com.au/news/victoria/lara-bingle-to-sue-brendan-fevola-over-nude-photo/story-e6fr-f7l6-1225835852364>. Accessed 31 January 2013.
- Chesler, P. (2010), “Ban the Burqa? The Argument in Favor,” *The Middle East Quarterly*, Fall, pp. 34–45.
- Clun, R. (2014), “Sam Worthington arrested in New York for Assaulting Photographer who Allegedly Kicked Lara Bingle,” *The Sydney Morning Herald*, 24 February. <http://www.smh.com.au/lifestyle/celebrity/sam-worthington-arrested-in-new-york-for-assaulting-photographer-who-allegedly-kicked-lara-bingle-20140224-33c4f.html>. Accessed 28 February 2014.
- Daily Mail* (2007), “Police Name Internet Paedophile Caught Out in Digitally Altered Images,” 16 October. <http://www.dailymail.co.uk/news/article-486334/Police-internet-paedophile-caught-digitally-al->

- [tered-images.html](#). Accessed 31 January 2013.
- Darwin, C. (1872), *The Expression of Emotion in Man and Animals*, London: J. Murray.
- Deleuze, G. and Guattari, F. (1988), *A Thousand Plateaus: Capitalism and Schizophrenia* (trans. B. Massumi), London: Athlone Press.
- Ewing, W. A. (2008), *Face: The New Photographic Portrait*, London: Thames and Hudson.
- Fahid, H. and Kee, E. (2011), "A Perceptual Metric for Photo Retouching," *Proceedings of the National Academy of Sciences of the United States of America*, 28 November, PNAS 108.50, 19907-12.
- Hafetz, D. (2005), "What's a Picture Worth—He Wants 1.6 Mil," *New York Post*, 26 June, p. 23.
- Langtry, L. (1925), *The Days I Knew*, New York: George H Doran Company.
- Lavater, J. C. (1885), *Essays on Physiognomy, Also One Hundred Physiognomical Rules, Taken From a Posthumous Work by J. C. Lavater, and a Memoir of the Author* (17th edn, trans. T. Holcroft), London: Ward Lock.
- Law Reform Commission of New South Wales (2010), "Report 127—Protecting Privacy in New South Wales," http://www.lawreform.lawlink.nsw.gov.au/agdbasev7wr/lrc/documents/pdf/r127_final_revised.pdf. Accessed 31 January 2013.
- Levinas, E. (1979), *Totality and Infinity: An Essay on Exteriority* (trans. A. Lingis), The Hague: Martinus Nijhoff Publishers.
- Lingua Franca (2011), "Embodied Cognition, Interview with Professor Rolf Zwaan," ABC Radio National Broadcast, 10 September. <http://www.abc.net.au/radionational/programs/linguafranca/embodied-cognition/2939354>. Accessed 31 January 2013.
- Marr, D. (2009), "Pesky Press Annoying You? Now You Can just Sue Them," *Sydney Morning Herald*, 15 August 2009. <http://www.smh.com.au/opinion/pesky-press-annoying-you-now-you-can-just-sue-them-20090814-el51.html>. Accessed 31 January 2013.
- Media Watch (2010), "Identity Fully Revealed," 8 March. <http://www.abc.net.au/mediawatch/transcripts/s2839839.htm>. Accessed 31 January 2013.
- Nemeth, A. (2012), "NSW Photo Rights: Street Photography Legal Issues," 4020, <http://4020.net/words/photorights.php>. Accessed 31 January 2013.
- news.com.au* (2013), "Tearful Chrissie Swan Admits She Hasn't Been Able to Quit Smoking While Pregnant." <http://www.news.com.au/entertainment/celebrity/mix-fm-presenter-chrissie-swan-admits-to-smoking-cigarettes-while-pregnant/story-e6frfmqi-1226572082685>. Accessed 10 February 2013.
- National ICT Australia (NICTA) (2013), *Advanced Surveillance Project*. http://nicta.com.au/research/projects/safe_as/.
- O'Brien, S. (2012), "Lara Bingle's Nude Paparazzi Snaps a Privacy Invasion," *Herald Sun*, 2 May. <http://www.heraldsun.com.au/opinion/lara-bingles-nude-paparazzi-snaps-a-privacy-invasion/story-fn56aa-iq-1226344709298>. Accessed 31 January 2013.
- Smith, D. (2011), "Why One Look Will Put the Fear of God Into You," *Sydney Morning Herald*, 11 June. <http://www.smh.com.au/national/why-one-look-will-put-the-fear-of-god-into-you-20110610-1fx30.html>.

- Accessed 31 January 2013.
- Soltani, N. (2012), *My Stolen Face: The Story of a Dramatic Mistake*, Kailash: Random House.
- Sydney Morning Herald (2006), "Bingle Bites Back—Sues Men's Mag," 11 May. <http://www.smh.com.au/news/stay-in-touch/bingle-bites-back--sues-mens-mag/2006/05/10/1146940612505.html>. Accessed 31 January 2013.
- Sydney Morning Herald (2006), "Judge Backs Bingle on Zoo Smut," 8 December. <http://www.smh.com.au/articles/2006/12/08/1165081128065.html?from=rss>. Accessed 31 January 2013.
- The Daily Telegraph (2007), "Sonny Bill, Candice toilet Joke," 14 April. <http://www.dailytelegraph.com.au/news/sonny-bill-candice-toilet-joke/story-e6frewt0-1111113317469>. Accessed 31 January 2013.
- White, S. (2011), "Pardon the Expression," *Sydney Morning Herald*, 6-7 August, 23.
- Wikipedia, "Christopher Paul Neil." http://en.wikipedia.org/wiki/Christopher_Paul_Neil. Accessed 31 January 2013.
- Wikipedia, "Death of Neda Agha-Soltan." http://en.wikipedia.org/wiki/Death_of_Neda_Agha-Soltan. Accessed 31 January 2013.
- Wikipedia, "Personality Rights." http://en.wikipedia.org/wiki/Personality_rights. Accessed 31 January 2013.
- Zwaan, R. (2013), *Brain & Cognition*, Erasmus University Rotterdam. <http://www.brain-cognition.eu>. Accessed 31 January 2013.

NOTES

- 1 A gallery of illustrations to this article can be found at: <http://martynjolly.com/2014/03/24/the-face-in-digital-space/>. Earlier versions of this article were delivered as papers at the Imaging Identities conference, National Portrait Gallery, Canberra, 15 July 2010 and the Photography and Crime forum, Centre for Contemporary Photography, Melbourne, 15 October 2011, and reproduced at timemachinemag.com in 2011.

10

**FROM *SIXTEEN GOOGLE*
*STREET VIEWS***

—

Jon Rafman





PAGE 159

—

Jon Rafman, 58 Lungomare 9 Maggio, Bari, Puglia, Italy, 2009.

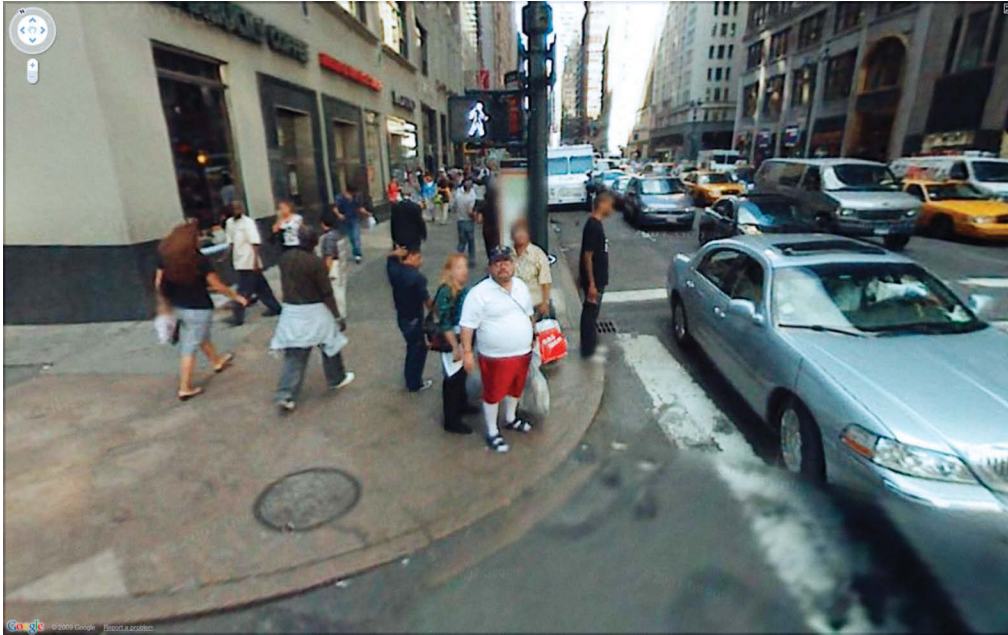
PAGES 160 / 161

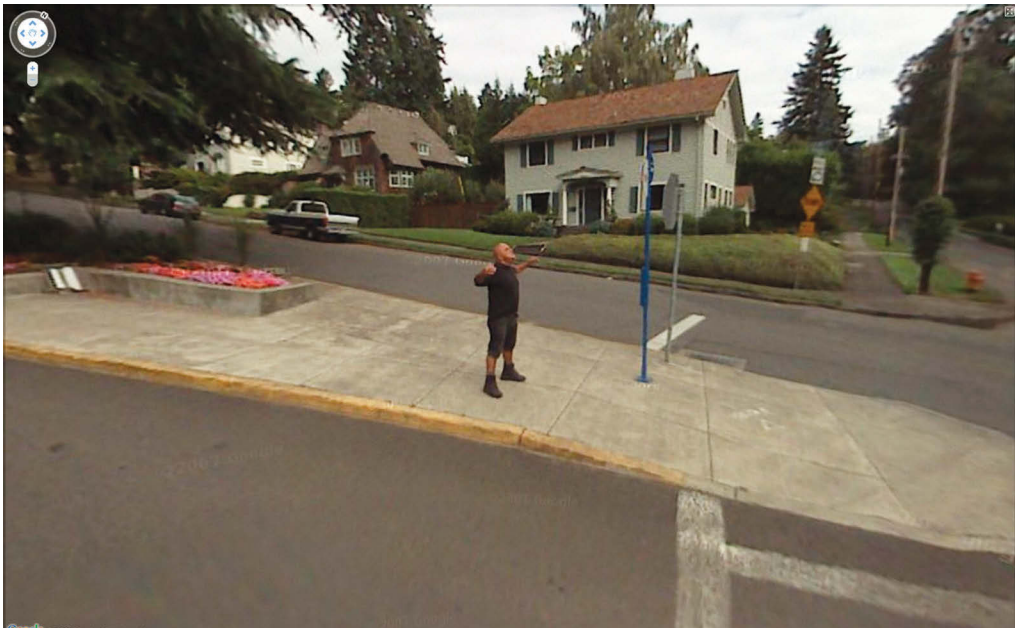
—

Jon Rafman, Via Colombo, Mediglia, Lombardy, Italy, 2009.

Jon Rafman, 204 W 35th St, New York, New York, United States, 2009.

Jon Rafman, Rue des Poissonniers, Paris, France, 2009.





PAGE 162

Jon Rafman, Rue du Plan d'Agde/Place Saint-Roch, Montpellier, France, 2009.

Jon Rafman, 308 SW Rose Garden Way, Portland, Oregon, United States, 2009.





PAGE 164

—
Jon Rafman, Scenic Highway, Northwest Comanche, Oklahoma, United States, 2009.



PAGES 166 / 167

Jon Rafman, 5 Via di Santa Chiara, Rome, Lazio, Italy.

Jon Rafman, Rue de la Fontaine, Guemene-Scorff,
Morbihan, France, 2009.



11

**GOOGLE STREET VIEW
AND PHOTOGRAPHY
IN PUBLIC SPACE**

—

Daniel Palmer

Street View pictures unintentionally capture lots of things ... They're not magically structured the way great street photography is, but they're omniscient.

Michael T. Jones, Google Chief Technology Advocate (2011)

Today we live in a world where everything is recorded, but no particular significance is accorded to anything. We want to matter and we want to matter to somebody but loneliness and anonymity is often our plight.

Jon Rafman (2009)

In this chapter I explore a paradox: namely, how the current suspicion of street photographers coincides with the rise of new forms of consumer-oriented online surveillance. My focus is Google Street View—the extraordinary result of today's largest technology company sending out fleets of GPS-enabled vehicles equipped with cameras to automatically capture whatever moves through their frame. With an ambition to photographically archive every street in the world (and more), Google's official goal is to enable its users to identify places rather than people, and Internet users have for the most part welcomed it enthusiastically. Nevertheless, Street View has also attracted concern and a degree of media controversy around its potential to invade privacy, particularly as people are often caught unaware in its gaze. My aim is to examine some of these controversies and Google's responses, and to consider some of the unexpected consequences around the networking of location-aware cameras under the control of a handful of powerful technology companies. Then, by exploring a variety of recent artistic responses to Street View, I propose to consider how its unconventional and essentially anonymous form of photographic authorship participates in an important recalibration of traditional understandings of notions of private and public within photographic practice. Put simply, I argue that the terms of the debate about photography in public space are made immensely more complex in the age of networked location-aware cameras.

What does it mean to be a subject of photography in public today? One answer to this question is suggested by the events following the London riots in August 2011. The British government, seeking to identify various rioters and looters, wasted no time in utilizing images captured by CCTV on the online photo-sharing site Flickr, as well as displaying them on giant roving digital billboards. Operating as high-tech manifestations of the older con-

vention of the wanted poster, this contemporary use of photography also extended a long history of the camera being used to identify and incriminate the unruly masses. Famously, in 1871, photographs of proud revolutionaries standing at the barricades during the Paris Commune fell into the hands of police and were then used to identify those insurgents left at large in the wake of the Commune's suppression. In Britain in the 1910s, the police took unauthorized photographs of "militant" suffragettes, whose individual portraits were then printed on cards that enabled authorities to identify and recognize the women involved. As these examples demonstrate, people and events—not to mention animals, plants, landscapes and buildings—have all been routinely subject to the camera's gaze since the invention of photography in the mid-nineteenth century. But while the fundamental legal and ethical question raised by public surveillance continue to concern the nature of power and who wields it, the scope of the camera's gaze and the networked dispersal of the image has outgrown our conventional understanding. Indeed, the gaze of security cameras is so omnipresent and powerful today as to be largely invisible—a fact illustrated by the public's almost complete acceptance of CCTV in urban spaces. Certain forms of surveillance, like Google Street View, are rarely even recognized as such.

Another, more positive answer to the question of being exposed to the camera in public is to remember that simultaneous with the rise of official (state and private) surveillance, photographic practice has also become ubiquitous amongst ordinary citizens. With every mobile phone now containing an embedded camera, most of them connected to the publishing potential of the Internet, picture making and distributing has been thoroughly democratized. But herein lies the paradox: in contrast to the acceptance of security cameras, various concerns have surfaced about this democratic dimension of photography. Ironically, in the age of "selfies," individual "street" photographers taking pictures of strangers in public places are often under suspicion. Of course, such anxieties are not unique to the present moment. For instance, when amateur photography began to flourish following the Kodak revolution in the 1880s, commentators described the anxiety engendered by "amateur instantaneous photograph cranks"—who threatened to make a permanent record of any instant (Mnookin 1998: 14). And just as the late nineteenth century anxiety emerged because the then new smaller cameras had made it possible for a photograph to be taken without the subject's knowledge, today's suspicions coincide with a technological development in the form of the camera phone. The camera phone (which today stands in for snapshot cameras in general), despite its celebrated applications in citizen journalism, has become an object of anxiety by virtue of its potentially voyeuristic uses in public places like the beach and on escalators. But while the ensuing debates focus on individual bodily privacy, it is abundantly clear—as other contributions to this book describe—that photo-

graphic activity is also caught up in other cultural anxieties such as the so-called “war on terror,” adolescent sexuality and our obsession with the private lives of celebrities. Popular debate in the mass media about these issues invariably obscures the fact that social relations within public space are constantly renegotiated by media technologies, and increasingly encroached upon by corporate interests.

GOOGLE STREET VIEW

Commencing in 2007, Google sent out an army of GPS-enabled cars (and occasionally tricycles), each one bearing nine cameras on a single pole. This fleet of vehicles began a seemingly endless quest to photograph every highway and byway in the world. Every 10 to 20 metres, the cameras automatically capture whatever moves through their frame. Computer software then stitches the photos together to create panoramic images that may be “walked through” using a computer mouse or keyboard. Rather than a static aerial map, in other words, the view is that of a virtual pedestrian. However, unlike Michel de Certeau’s classic celebration of the pedestrian and the act of walking, Google’s mediated street level now operates as a continuation of the all-seeing “voyeur-god” and the mastering “lust to be a viewpoint” (de Certeau 1984: 92–93). A user of Google Street View is both omniscient and detached, isolated in front of their monitor screen or mobile display. This is matched by Google’s virtual architecture of perception, which is marked by dispassionate uniformity. Indeed it appears to be “an image of the world formed automatically, without the creative intervention of man,” as Andre Bazin enthused of photography in general (Bazin 1960: 6). Google’s automated aesthetic extends a mode of realism developed by cinema verite, of everyday life flowing endlessly by in front of the mechanical eye-witness of the camera lens. It was a lesson that Andy Warhol knew well, when he simply turned on the camera and walked away, in films like *Empire* (1964): that reality is best evoked for the viewer when precisely nothing happens.

Nevertheless, Street View complicates debates about photography’s supposed objectivity, for the machine gaze is made subjective through our internal wanderings in it. The key markers of traditional photographic composition such as point of view, framing and focus are all but expunged in these images: we might note the slightly raised perspective of the roof-mounted cameras, for instance, but it is now the case that the image-frame is generated by the user of Street View, and the focal point is variable to the extent that we zoom in and out. The social ethnographer Sarah Pink has written of “the *impression* or *sensation* of being able to smoothly traverse or turn in a street” (Pink 2011: 11). As she notes, these are images “produced in movement,” taken at fixed intervals, “consumed through *the experi-*

ence of movement" (Pink 2011: 11). The image and the viewer are in an endless reciprocal relationship. To experience the image is a temporal act, of zooming and turning and morphing the scene. Of course, this is quite distinct from viewing a single photograph. Moreover, since Street View images are not just a single moment from the past, but a stitched together series of instants from a presumably recent but undated past, experienced fluidly, they complicate the strange "that-has-been" tense of the photographic image that Roland Barthes famously described as its *noeme* (Barthes 1981: 100). Fundamentally, as Pink describes, Street View "affords viewers possibilities to use their existing experiences of environments to sense what it might be or how it might feel to move through the 'real' locality represented on screen" (Pink 2011: 11). Expressed differently, Street View elicits a libidinal desire to see the world in endless detail, in infinite resolution—evoking an old fantasy of perfect access to the world—now apparently offered at the scale of the whole city, but at the same time endlessly frustrated in our experience of the tunnel vision of stitched-together panoramic images, taken in a straight line, with all the resulting aberrations and absences. Such is the strange phenomenology of Street View.

Google's enormous project, created for the purpose of adding a new feature to its existing online Maps function, is consistent with the company's stated mission to organize the world's information and make it universally accessible and useful. From a commercial point of view, Street View is part of an ecology of location-based image making increasingly brought together under Google's archival umbrella. This universe is ever expanding. Thus, for Google's Chief Technology Advocate, Michael T. Jones, the networking of location-aware cameras is creating a situation in which "the earth itself is like a table of contents for direct exploration of all the photographs...shared by people around the world, automatically" (Jones 2011). Such a benign-sounding notion of universal sharing is revealing as much for what it conceals as illuminates. What Jones does not say, for instance, is that Google's "omnivorous hunger for geodata"—as Steven Levy puts it in his book *In the Plex: How Google Thinks, Works, and Shapes Our Lives*—is driven, to an often invisible extent, by businesses competing for eyeballs (Levy 2011: 340). Finding businesses and virtual tourism are clearly activities that can be monetized in various ways, as we will see.

Street View has elicited a number of privacy concerns. Many countries immediately sought assurances about privacy and others initially prohibited Google mapping services on the basis of national security (on Israel, see Sobelman 2011). In 2008, Pittsburgh couple filed a suit against Google for invasion of privacy after Street View made photographs of the couple's home available online without their consent, and there are reports of residents occasionally blocking access to street view vehicles. Various privacy watchdogs have pro-

tested, and concessions by Google have been made (such as Google Japan agreeing to lower the height of the cameras on its vehicles to keep homes concealed). A useful timetable detailing many of these events is listed on the website of the Electronic Privacy Information Center (www.epic.org/privacy/streetview). The British launch of Google Street View in March 2009 established a familiar pattern, whereby, in the ensuing controversy around invasions of privacy, thousands of images were removed, including a picture showing a man emerging from a Soho sex shop in London and an image of a man vomiting outside a pub in East London (Riley 2009). By 2009, to assuage the most obvious of privacy concerns, Google developed an algorithm that would automatically blur faces and licence plates beyond recognition (more or less successfully).¹ In other words, Google uses a variant of the face recognition feature that is more commonly designed to assist focus in point-and-shoot cameras, or, more recently to identify faces, whether in airports through e-Passports and now even in consumer software like iPhoto (all technologies that, like GPS, had military origins). Google also added a “report a problem” feature—available from every page of Street View, in which users can “report inappropriate Street View.” Google’s general reaction is to remove controversial—or potentially brand-tarnishing—images soon after they are publicized. For instance, Google removed images of naked toddlers playing in a garden square in north London within an hour of them being reported, amid fears they could be exploited (Khan 2009).

Removal of potentially offensive material is not always so straightforward, as with a giant green penis *graffitied* in paint on an Australian Google camera lens in 2011—which left its mark up and down various suburban streets (Moses 2011). We can interpret this prank in the tradition of “*ad hoc* negotiation and resistance” (Lyon 2001: 66), but it also relates to activist art works that speak back to surveillance in more subtle and articulate ways—such as well-known examples by Sydney artist Denis Beaubois (see [Chapter 8](#)) or the Surveillance Camera Players. However crudely, even a green penis could be said to challenge the unidirectional blankness of automated surveillance—like the tradition of prison inmates drawing splayed legs and genitalia around the peep hole on prison doors for when the guards peeps through (Palmer 1997).

Street View actively seeks to distance itself from forms of identificatory surveillance that might be useful for the police law enforcement and criminal identification practices. The focus is squarely on the identification of streets, landmarks and businesses, rather than individuals. Google’s own promotional material speaks of three primary uses: “finding a business,” “virtual tourism” or “just organizing a meeting place with a friend.” But of course many people have been able to identify themselves, and many others try, in the same way

people often visit the house(s) they grew up in when they first use Street View. One British man, admiring his own house in the village of Elmswell, Suffolk, was surprised to see his wife pictured not once, but 43 times walking her dog. Wendy Southgate thought nothing more about her walk with Trixie, until her husband logged on to Google Street View (*Daily Mail* 2010). Evidently, the Google camera car followed the same route as she did, and pictured her for half a mile. The 52-year-old woman may be the most photographed person in the medium. Nevertheless, the identification of individuals is clearly marginal to the general operation of Street View (and given the months or even years delay between the recording and viewing of the street scenes it is hard to imagine its use in the detection of crimes or other events). Undoubtedly this is why, despite the various concerns raised above, Street View has been welcomed enthusiastically by most Internet users. In other words, it is an example of how “[r]ather than a distrusted invasion of privacy, online surveillance in general has gradually been made ‘friendly’ and transformed into an accepted spectacle” (Rafman 2009).

PHOTOGRAPHIC RESPONSES TO STREET VIEW

I now want to explore some of the unexpected responses to Street View, and especially those by photographers. It is well known that each time a new city or country is photographed by Google’s cars, Street View “spotters” scour the streets for “exotic” or “unusual” subjects captured by the cameras. These often “awkward” moments then make the rounds on blogs and often end up being reported in mainstream media. Images from Brazil attracted a particularly high number of unusual sightings when that country was mapped. Invariably, a number of familiar genres reappear, typically voyeuristic, by turns amusing and sad: car and bicycle accidents, people committing crimes or being caught by police, people giving the finger or poking their bums at Google cameras, street prostitutes, indeed nudity of any kind (including public urination), the homeless and people who appear to be dead or lying on the streets. In short, these collections elicit the variety of fascinations that have long attracted the dominant Surrealist sensibility in photography that Susan Sontag critiqued in 1977: notably, the screen captures that end up in newspaper articles are overwhelmingly concerned with impoverished neighbourhoods and the often unfortunate things that seem to take place on the street there, from simple loitering to crime and soliciting.

A number of photographers have also utilized the space of Google Street View as a virtual form of photojournalism—treating the space of Street View as raw material that offers a variety of creative possibilities through framing. Essentially, these artists purposely conflate

the screen with the frame—picking up on one of the essential qualities of photographic images: that they simultaneously reveal both more and less than we expect from them. Street View, as Gabrielle Moser has argued, is characterized by this tension between lack and excess (Moser 2011). For instance, while Street View “is less concerned with depicting events than it is with representing *environments*” (Moser 2011), minor events nevertheless occur within its spaces. Thus German artist Michael Wolf was able to collect a series of ill-fated events—such as bicycle accidents or people inexplicably collapsed on the pavement—by scrutinizing the scenes of Street View and then taking a photograph of the monitor screen for his exhibition and book *A Series of Unfortunate Events* (2010). When his work won a controversial Honorable Mention in the Contemporary Issues category at the prestigious World Press Photo awards in 2011, it drew attention to the idea of photographers working within the space of Street View. In Wolf’s case, the effect of photographing the screen, and often highlighting map features such as arrows, emphasized the technology itself (see [Chapter 4](#)). But the work also raised the question—already presented in Wolf’s earlier work *Tokyo Compression* (2010), featuring close-up images of passengers squashed into the subway system in Tokyo—of how photographers can picture the public today.

Doug Rickard’s series *A New American Picture* (2012) is focused on particular places in the United States where unemployment is high and educational opportunities are few. In 2009, unable to head off on a physical road trip himself, the studio-bound California-based photographer happened upon the artistic potential of Google’s Street View tool and took a virtual road trip instead. In the context of the recession, he soon realized he could present an American view of the “brokenness” of his nation, the inverted American Dream (Stone 2013). Rickard composed images on his computer screen, which he then photographed using a digital camera. The resulting pictures are digitally manipulated to remove the Google watermark and cropped to a panoramic format, and “comment on poverty and racial equity in the United States, the bounty of images on the web, and issues of personal privacy” (Stone 2013). They also, crucially, evoke various familiar American photographic precursors—many of the images echo those taken earlier by figures like Walker Evans and William Eggleston. Rickard could be accused of exploiting stereotypes of poverty, and focusing on African-Americans, but he maintains that his project operates as social commentary, stating in an interview published in the book with Erin O’Toole that it “definitely wasn’t their [Google’s] aim to produce pictures with social commentary. That is what I wanted to do” (Rickard 2012: 138).

Even more explicitly focused on the socially excluded, the Dutch artist Mishka Henner has produced archival pigment prints and a whole book of Street View images of prostitutes—

No Man's Land (2012)—as a result of scouring Internet forums that pinpoint sex workers' locations in Southern Europe. A controversial finalist in the 2013 Deutsche Börse Photography Prize at the London Photographers Gallery, the artist's website somewhat disingenuously suggests that "*No Man's Land* represents isolated women occupying the margins of southern European environments, shot entirely with Google Street View" (www.mishka-henner.com). Indeed, women are seen vying for business at the side of litter-strewn roads or underpasses, often sheltering from the glaring sunlight—alone, bored and in depraved conditions. Pictured on the outskirts of cities primarily in Italy and Spain, the images reveal how illicit activities, driven out of the centre, will find other sites. Unsettling *en masse*, this series of images also makes it clear that the sex trade thrives on the exploitation of migrant workers. The gender inequality is clear; as the title suggests, no men are pictured in the photographs—although the driver of the Google car is presumably male. And as viewers, we are implicated in our voyeurism from the safety of our computer screen or book. Indeed, Henner seems to relish in precisely this distance for which photographers have so often been critiqued. Of course, his subjects cannot speak, nor do they have any control over the way in which they are represented. All of this charges viewers, as Ariella Azoulay might say, with an obligation to recognize a civil contract amongst subject, photographer and viewer. But since the photographer in this case is Google's automated camera, we are left with a contract between subject and viewer, and, to paraphrase Azoulay, a responsibility as a viewer to change the conditions that make the division between non-citizen subjects and citizen viewers possible (Azoulay 2008: 31–33).

JON RAFMAN: WITNESSING ON STREET VIEW

Wolf, Rickard and Henner each provide evidence of how photographers have been using Street View for alternative ends. However, I want to focus on Canadian artist Jon Rafman, who, since 2008, has been collecting screen captures of Google Street View from a range of blogs and through his own "hunting" (see [Chapter 10](#)). Rafman is an interesting case, because he has not only published his work and exhibited it at photographic exhibitions such as Arles, but he has also written extensively and quite earnestly about his work, including a 2009 essay "The Nine Eyes of Google Street View," which I will quote from extensively here. Rafman is self-conscious that "the Street View collections often reveal it is the poor and the marginalized who fall within the purview of the Google camera gaze" and distances himself from the libidinal appeal of some imagery (Rafman 2009). Rafman admits that initially, he was "'attracted to the noisy amateur aesthetic of the raw images' and that Street Views evoked an 'urgency' he felt was present in earlier street photography" (Rafman 2009). He says he was able to "locate images of gritty urban life reminiscent of hard-

boiled American street photography,” or he “can find images of rural Americana that recall photography commissioned by the Farm Securities Administration during the depression” (Rafman 2009). Not to mention “postcard-perfect shots that capture what Cartier-Bresson titled ‘the decisive moment’... as if [he] were a photojournalist responding instantaneously to an emerging event” (Rafman 2009; Droitcour 2010). In other words, Rafman’s deferred and multiple “monitor moments,” to coin an ugly phrase, are informed by an aesthetic that simulates the various histories of “documentary style” photography. He confesses that he has been “mesmerized by the sense of nostalgia, yearning, and loss” in these images—qualities that he says even, at times, evoke old family snapshots (Rafman 2009).

Rafman points out that Google’s “systematic storing of panoramic views serves photography’s historic role of cultural preservation” (Rafman 2009). One is reminded here of one of the founding documents in photographic culture, inventor William Henry Fox Talbot’s prospectus-like book *The Pencil of Nature* from 1844. Talbot emphasized the practical implications of photography, being acutely aware that “the operator himself discovers on examination, perhaps long afterwards, that he has depicted many things he had no notion of at the time” (Talbot 2010: 40). In Google’s case, Street View raises the question of whether they or someone else will archive the various versions of the imagery as the cars periodically re-roam the streets and photograph at ever higher resolution. Google Street View produces an archive of a very particular kind. Its temporality, as I have already suggested, is ambiguous. As Joanne McNeil puts it, “The slightly faded, sometimes blurry look of Google Street View appears without any time signifiers. No time stamps or indication as to what day the cars drove out” (McNeil 2010). This information is available—all digital cameras record a time stamp—but it is concealed to end-users. Google is providing a service relevant for present use, and presumably has no desire to remind its users that the view they are seeing might have been taken several years ago, and may in some cases no longer even exist. As such, Google’s projects belong to a long history of map maker’s aspirations to transcend their inevitable locatedness in a historical time and place. Moreover, in the ease with which it can be revised, Street View shares with digital databases in general a repression of narrative temporality. Consequently, by “photographing” within the virtual space of Street View, plucking individual screen images out into the physical realm, artists are reintroducing a certain historical dimension to Google’s fluid, spatial database.

Rafman is attentive to the specific aesthetics of the Street View archive: “The blurring of faces, the unique digital texture, and the warped sense of depth resulting from the panoramic view... are all particular to Street View’s visual grammar” (Rafman 2009). Thus he rightly points out that “Street View photographs...remain cultural texts demanding in-

terpretation,” eventually concluding that Google’s “way of recording our world, this tension between an automated camera and a human [user] who seeks meaning, reflects our modern experience” (Rafman 2009). Hence his attraction to the rare glimpses of a street view driver. But it would be a mistake to interpret his intervention as a simple critique of Google’s activities, say in relation to privacy. Rafman prefers to understand Street View as a symptom of our existential alienation. Thus he writes: “Street Views can suggest what it feels like when scenes are connected primarily by geographic contiguity as opposed to human bonds” and “to have everything recorded, but no particular significance accorded to anything” (Rafman 2009). He continues:

Does not Google’s mode of recording the world make manifest how we already structure our perception? Our own experience often parallels this detached, indifferent mode of recording with consequent questions about our own significance.

But perhaps Rafman’s most quotable line is a criticism that has been levelled at photo-journalists for decades: Google cameras, he says, “witness but do not act in history. For all Google cares, the world could be absent of moral dimension” (Rafman 2009). Indeed, the Google drivers appear to take their role as uninvolved witnesses seriously, seemingly never wincing in the face of whatever tragedy they pass by. Thus a Google fleet car appears to glide by a burning house on an eerily unpopulated Arkansas street with complete detachment. In the face of such indifference, Rafman finds his own role: “The artist/curator challenges Google’s imperial claims and questions the company’s right to be the only one framing our cognitions and perceptions” (Rafman 2009).

Lucy Soutter has argued that “Rafman shares some aspects of the traditional social documentary photography: to educate and reveal” (Soutter 2013: 104). For his part, Rafman claims that “in the act of framing, the artist reasserts the importance of the individual” (Rafman 2009). To my mind, this is a slightly disappointing justification for his work, in the sense that it offers only the compensatory response of individualism. Indeed, a Romantic streak to Rafman’s sensibility is revealed by the inclusion of utopian scenes of nature and animals in incongruous environments as well as birds and butterflies, rainbows and psychedelic optical effects accidentally generated by the Street View cameras. These effects relate to the powerful realism of Street View, in that it builds on photography’s well-known “spark of contingency” with which “reality has seared the subject,” as Walter Benjamin famously put it (Benjamin 1979: 243). However, beyond Romanticism, Rafman’s project also points to the fact that the mute imagery of Street View elicits a particular kind of attentiveness in the face of this new form of photographic image, and a specific mode of consumption

in movement, as Pink (2011) describes. We move through and scan the mobile frame, not in anticipation of action, but to identify a building or location we know, or, more often, a site we do not actually know but may be about to visit (a hotel, a potential rental, café and so on). In the process, Street View turns the screen image into an instrumental, functional device. Or at least, it alternates between a window and a control panel—a quality Lev Manovich traces to military systems and computer games—giving an illusion of control in the world (Manovich 2001: 207). Collected together, Rafman’s images raise an ethics of witnessing that go beyond the individualistic “right to privacy” echoed in Google’s “report a problem.” Precisely because the (corporate) camera witnesses but does not act in history, ethical responsibility lies with all the anonymous viewers online. By reframing Street View scenes, Rafman does not merely reassert the importance of the individual viewer so much as question the act of looking itself as it is transformed into an instrumental action.

CONCLUSIONS

What is at stake in new methods of representation such as Street View? And what does it mean for photography? It is hard to avoid the conclusion that Street View re-affirms what John Tagg wrote back in the 1980s:

The photograph is not a magical ‘emanation’ but a material product of a material apparatus set to work in specific contexts, by specific forces, for more or less defined purposes.

(Tagg 1988: 3)

Street View—like the augmentation of everyday urban space with location-aware mobile phones—is subtly, but clearly “aligned with the extension of commodity logic into the interstices of both public and private space” (McQuire 2008: 204). To understand Street View it is important to recognize that its use is animated by the emerging politics of meta-data within the interfaces of everyday life, and that in the age of neo-liberalism, citizens have become consumers above all. In the context of planetary-scale computation, a large number of people willingly surrender aspects of their identity to privately owned multinationals who demonstrate a cavalier disregard to privacy. For instance, social networking site Facebook tracks the websites its users visit even when they are logged out of the social networking site, in what David Vaile has called a “breathtaking and audacious grab for whole life data” (Moses 2011a). Similarly, Google’s algorithms and our use of them are generating an archive of ever-increasing value in our attention economy. Recently, Google began integrating location data into all searches—the location of an IP address or a GPS coordinate of a mobile phone now factors into search results. And “even if there is no ob-

vious immediate use for location, the data is being aggregated and collected with a mind towards future value" (Gordon and de Souza 2011: 2). The same could be said of Google collecting data from unencrypted WiFi networks in 2010 (in Australia and elsewhere), leading to a series of controversies that temporarily took their cars off the road. This was no accident; the software was knowingly installed to collect "unsecured" data from people's home WiFi networks—leading to a US judge finding against Google that an "unprotected Router" still granted the right of privacy. Just as we are all implicated in photography, we are all implicated in Google. If anyone remains in doubt about Google's extraordinary—yet opaque and virtually unchecked—influence on our lives, try typing "Where can I buy?" into the search field and wait to see the auto-complete (in Australia, weight loss pills appear unusually popular).

Our desires are increasingly predicted and pre-packaged in our Google searches, and they are gradually being localized. As Francesco Lapenta has suggested:

Geomedia are to space what the watch is to time. They regulate social behaviour, coordinate mediated interactions and can be interpreted as the new tools used to organize the production and exchange of the immaterial commodities, images and information that constitute these immaterial spaces.

(Lapenta 2011: 15)

Here it might also be noted that smart phones record geo-data without request: the "places" function on iPhoto suddenly appears as an unexpected novelty, but it is not difficult to imagine how all this may be linked up and useful to others. Thus, although camera surveillance is the archetype of contemporary surveillance technologies and processes (Lyon 2001), data surveillance is increasingly more important. And indeed, photography—as sensor-data—is increasingly just another element in a data mix whose potency is now best enabled by its machine readability as code (via metadata such as GPS coordinates as well as facial recognition).

As Scott McQuire has argued of smart phones, the cultural problem is "not simply the exposure of the previously private," but rather the "failure to imagine new publics" (McQuire 2008: 204). What is needed—and what artists can help to provide—are moments of reflection and critique, to move beyond an unproductive structure of voyeurism and narcissism towards different ways of thinking about what is in fact *public* in an age where one's privacy (framed as a self-evident right related to self-possessed autonomous individuals) is considered more important than another's *privation*. It seems inevitable that new locational

technologies will continue to affect the way artists—and particularly photographers—find, interact with and even define the landscape. The widespread availability of handheld GPS units, the popularity of Google maps and Google Street View technologies and the increasing appearance of geo-tags in social media such as Twitter are but a handful of the relatively recent developments that are shaping artistic practice. Artists help remind us that looking is never innocent; it is a social act, never a simple act of consumption.

Along these lines, it seems appropriate to conclude with one of the most innovative artistic responses to Street View. In his 2012 activist *Street Ghosts* project, North American artist Paolo Cirio printed out life-sized pictures of people found on Google's Street View and posted these ghostly presences, without authorization, at the same spot where they were taken. The posters are printed in colour on thin paper, cut along the outline and then affixed on the walls of public buildings at the *precise* spot on the wall where they appear in Google's Street View image. Accompanied by an impressive, manifesto-like artist statement, Cirio claims that by "de-virtualizing" he exposes "the specters of Google's eternal realm of private, misappropriated data: the bodies of people captured by Google's Street View cameras" (Cirio 2012). In essence, Cirio sees himself as inverting Google's surveillance process:

As the publicly accessible pictures are of individuals taken without their permission, I reversed the act: I took the pictures of individuals without Google's permission and posted them on public walls.

(Cirio 2012)

Cirio understands these ghostly human bodies in colourful terms, "as casualties of the info-war in the city, a transitory record of collateral damage from the battle between corporations, governments, civilians and algorithms" (Cirio 2012). But he is acutely conscious of what is at stake in his action, which he understands as much more than just individual privacy:

The public display of this biopolitical surplus from Google's value-harvesting campaigns—the people aren't supposed to appear in the pictures, but they do—appropriates their aesthetic and political value, as opposed to the commercial. Google appropriates the social labor we perform by constituting the public; simply by investing the city with social meaning, we unintentionally provide value for Google to capture.

As I noted at the start of this chapter, photography has long been involved in configuring

the boundaries between private and public space; today, Google Street View reveals that the conditions are skewed dramatically towards the private and corporate at the expense of the public. This is just another reason why, in the context of networked geo-located data that is mass accumulated and intensely mined, calls for restrictions on the activities of individual photographers in public space are not only misguided but decidedly quaint.

REFERENCES

- Azoulay, A. (2008), *The Civil Contract of Photography*, New York: Zone Books.
- Barthes, R. (1981), *Camera Lucida: Reflections of Photography* (trans. R. Howard), New York: Farrar, Strauss and Giroux.
- Bazin, A. (1960), "The Ontology of the Photographic Image," (trans. H. Gray) *Film Quarterly*, 13: 4, pp. 4–9.
- Benjamin, W. (1979), "A Small History of Photography," *One Way Street and Other Writings* (trans. E. Jephcott and K. Shorter), London: Verso, pp. 240–257.
- Company, D. (2013), "Mishka Henner," *Deutsche Börse Photography Prize*, London: London Photographers Gallery.
- Cirio, P. (2012), *Street Ghosts*. <http://streetghosts.net/>.
- Daily Mail (2010), "Husband Spots Wife Walking the Dog 43 Times on Google Street View," 19 April. <http://www.dailymail.co.uk/news/article-1267190/Google-Street-View-photographs-woman-walking-dog-43-times.html>.
- de Certeau, M. (1984), *The Practice of Everyday Life* (trans. S. F. Rendall), Berkeley, CA: University of California Press.
- Droitcour, B. (2010), "All Together Now," *Free*, New York: New Museum, Online exhibition catalogue. <http://archive.rhizome.org/free/>.
- Gordon, E. and de Souza e Silva, A. (2011), *Net Locality: Why Location Matters in a Networked World*, Boston, MA: Blackwell-Wiley.
- Jones, M. T. (2011), "The Total Archive," unpublished paper presented at *The Photographic Universe* (Parsons), 2-3 March. <http://www.youtube.com/watch?v=aG1RMLS5-p0>.
- Khan, U. (2009), "Google Removes Picture of Naked Child from Street View," *The Telegraph*, 22 March. <http://www.telegraph.co.uk/technology/google/5032900/Google-removes-picture-of-naked-child-from-Street-View.html>.
- Lapenta, F. (2011), "Geomedia: On Location-based Media, the Changing Status of Collective Image Production and the Emergence of Social Navigation Systems," *Visual Studies*, 26:1, pp. 14–24.
- Levy, S. (2011), *In the Plex: How Google Thinks, Works, and Shapes Our Lives*, New York: Simon & Schuster.
- Lyon, D. (2001), *Surveillance Society: Monitoring Everyday Life*, Buckingham: Open University.
- Manovich, L. (2001), *The Language of New Media*, Cambridge, MA: MIT Press.
- McNeil, J. (2010), "Overfutures," *Free*, New York: New Museum, online exhibition catalogue. <http://ar->

- chive.rhizome.org/free/.
- McQuire, S. (2008), *The Media City: Media, Architecture and Urban Space*, London: Sage.
- Mnookin, J. L. (1998), "The image of Truth: Photographic Evidence and the Power of Analogy," *Yale Journal of Law & the Humanities*, 10: 1, pp. 71–74.
- Moser, G. (2011), "Exhaustive Images: Surveillance, Sovereignty, and Subjectivity in Google Maps Street View," *Fillip* 15. <http://fillip.ca/content/exhaustive-images>.
- Moses, A. (2011), "Aussie penis pranksters deface Google Street View," *Sydney Morning Herald*, 9 September. <http://www.smh.com.au/technology/technology-news/aussie-penis-pranksters-deface-google-street-view-20110909-1k0kg.html#ixzz2wx85q0Xq>.
- Moses, A. (2011a), "Facebook Tracks You Even After Logging Out," *Sydney Morning Herald*, 26 September. <http://www.smh.com.au/technology/technology-news/facebook-tracks-you-even-after-logging-out-20110926-1ksfk.html>.
- Palmer, D. (1997), "In the Anonymity of a Murmur: Graffiti and the Construction of the Past at the Fremantle Prison," *Studies in Western Australian History*, 17, pp. 104–115.
- Pink, S. (2011), "Sensory Digital Photography: Re-thinking "Moving" and the Image," *Visual Studies*, 26:1, pp. 4–13.
- Rafman, J. (2009), "The Nine Eyes of Google Street View," *Art Fag City*, 12 August. <http://www.artfagcity.com/2009/08/12/img-mgmt-the-nine-eyes-of-google-street-view>.
- Rickard, J. (2012), *A New American Picture*, New York: Aperture.
- Riley, J. (2009), "Privacy Groups Contest Google Street View Images," *The Independent*, 20 March. <http://www.independent.co.uk/life-style/gadgets-and-tech/news/privacy-groups-contest-google-street-view-images-1650207.html>.
- Sobelman, B. (2011), "Google Street View Coming to Jerusalem and Elsewhere," *Los Angeles Times*, 27 August. <http://latimesblogs.latimes.com/babylonbeyond/2011/08/israel-coming-soon-to-a-street-near-you-google-street-view.html>.
- Sontag, S. (1977), *On Photography*, New York: Farrar, Strauss and Giroux.
- Soutter, L. (2013), *Why Art Photography?*, New York: Routledge.
- Stone, T. (2013), "A New American Picture: Doug Rickard's Google Street View Road-trip," *ABC Arts*, 17 May. <http://www.abc.net.au/arts/blog/2013-head-on-festival/doug-rickard-a-new-american-picture/default.htm>.
- Tagg, J. (1988), *The Burden of Representation: Essays on Photographies and Histories*, London: Macmillan.
- Talbot, W. H. F. (2000), *The Pencil of Nature* (ebook version of 1844 original). <http://www.gutenberg.org/files/33447/33447-pdf>.

NOTES

- 1 In an alternative response, German artist Martin Backes developed an amusing anti-facial recognition artwork called *Pixelhead* (2012) in the form of a mask that enables the wearer to become invisible on Street View. It is described on his website as “media camouflage, completely shielding the head to ensure that your face is not recognizable on photographs taken in public places without securing permission. A simple piece of fabric creates a little piece of anonymity for the Internet age.” www.martin-backes.com/pixelhead-limited-edition

Further Reading

Anon. (1998), "Privacy, Photography, and the Press," *Harvard Law Review*, 111: 4, pp. 1086–1103.

Azoulay, A. (2008), *The Civil Contract of Photography* (trans. R. Mazali and R. Danieli), New York: Zone Books.

Baird, G. (2011), *Public Space: Cultural, Political Theory: Street Photography: An Interpretation*, Amsterdam: SUN.

Barthes, R. (1981), *Camera Lucida: Reflections of Photography* (trans. R. Howard), New York: Farrar, Strauss and Giroux.

Biber, K. (2007), *Captive Images: Race, Crime, Photography*, Abingdon/New York: Routledge-Cavendish.

Brin, D. (1998), *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?*, Reading: Perseus Books.

Brougher, K. and Ferguson, R. (2001), *Open City: Street Photographs Since 1950*, Oxford: Museum of Modern Art.

Calhoun, C. (ed.) (1992), *Habermas and the Public Sphere*, Cambridge, MA: MIT Press.

Finn, J. M. (2009), *Capturing the Criminal Image: From Mug Shot to Surveillance Society*, Minneapolis, MN: University of Minnesota Press.

Frosh, P. (2001), "The Public Eye and the Citizen-Voyeur: Photography as a Performance of Power," *Social Semiotics*, 11: 1. pp. 43–59.

Girardin, D. and Pirker, C. (2012), *Controversies: A Legal and Ethical History of Photography*, Arles: Actes Sud / Lausanne: Musée de l'Élysée.

Habermas, J. (1989/1962), *The Structural Transformation of the Public Sphere*, Cambridge, MA: MIT Press.

Hall, K. P. (2001), "Teenage Riot: Representations of Adolescence in Contemporary Art," *Artlink*, 21: 2, pp. 42–47.

Howarth, S. and McLaren, S. (2010), "Stare, Pry, Listen, Eavesdrop," *Street Photography Now*, London: Thames and Hudson.

Kurt Iveson (2007), *Publics and the City*, Malden: Blackwell.

Levin, T. Y., Frohne, U. and Weibel, P. (eds) (2002), *Ctrl [Space]: Rhetorics of Surveillance from Bentham to Big Brother*, Karlsruhe/Cambridge: ZKM Center for Art and Media/MIT Press.

MacNeill, K. (2010), "When Subject Becomes Object: Nakedness, Art and the Public Sphere," *Media International Australia*, 135, pp. 82–93.

McKee, A. (2009), *The Public Sphere: An Introduction*, New York: Cambridge University Press.

Marr, D. (2008), *The Henson Case*, Melbourne: Text Publishing.

Mitchell, W. J. T. (ed) (1992), *Art and the Public Sphere*, Chicago, IL: University of Chicago Press.

Moreham, N. A. (2006), "Privacy in Public Spaces," *Cambridge Law Journal*, 65: 3, pp. 606–635.

Nagar, T. (2012), *The New Street Photographer's Manifesto*, London: Ilex Press Limited.

Nissenbaum, H. (1998), "Protecting Privacy in an Information Age: The Problem of Privacy in Public," *Law and Philosophy*, 17: 5-6, pp. 559–596.

Paton-Simpson, E. (2000), "Privacy and the Reasonable Paranoid: The Protection of Privacy in Public Places," *University of Toronto Law Journal*, 50: 3, pp. 305–346.

Phillips, S. S. (ed) (2010), *Exposed: Voyeurism, Surveillance and the Camera Since 1870*, San Francisco, CA: San Francisco Museum of Modern Art.

Robbins, B. (ed) (1993), *The Phantom Public Sphere*, Minneapolis, MN: University of Minnesota Press.

Scott, C. (2007), *Street Photography: From Atget to Cartier-Bresson*, London: I.B. Tauris.

Slobogin, C. (2002), "Public Privacy: Camera Surveillance of Public Places and the Right to Anonymity," *Mississippi Law Journal*, 72, pp. 213, 237–267.

Sontag, S. (1977), *On Photography*, New York: Farrar, Strauss and Giroux.

Sykes, C. J. (2000), *The End of Privacy: The Attack on Personal Rights at Home, at Work, On-Line, and in Court*, New York: St. Martin's Press.

Tagg, J. (1988), *The Burden of Representation: Essays on Photographies and Histories*, London: Macmillan.

Warner, M. (2002), *Publics and Counterpublics*, New York: Zone Books.

Westerbeck, C. and Meyerowitz, J. (1994), *Bystander: A History of Street Photography*, London: Thames and Hudson.

Westin, A. F. (1967), *Privacy and Freedom*, New York: Atheneum.

Whitaker, R. (1999), *The End of Privacy: How Total Surveillance is Becoming a Reality*, New York: New Press.

Wombell, P. (ed.) (2013), *Drone: The Automated Image / Drone: l'image automatisée*. Montréal: Le Mois de la Photo à Montréal.

Contributors

ABOUT THE EDITORS

Anne Marsh is a Professorial Research Fellow at the Victorian College of the Arts, University of Melbourne. She is the author of *Performance Ritual Document* (2014), *LOOK: Contemporary Australian Photography Since 1980* (2010), *Pat Brassington: This is Not a Photograph* (2006), *The Darkroom: Photography and the Theatre of Desire* (2003) and *Body and Self: Performance Art in Australian, 1969–1992* (1993). Anne has published widely in edited books, refereed journals and art magazines in Australia, and has written numerous exhibition catalogue essays and reviews. She has been the Melbourne contributing editor for *Eyeline: Contemporary Visual Arts* since 1997.

Melissa Miles is an Associate Professor in the Art History and Theory Program in the Faculty of Art Design and Architecture at Monash University. Her interest in the interdisciplinary qualities of photography informs her books, *The Burning Mirror: Photography in an Ambivalent Light* (2008, 2010) and *The Language of Light and Dark: Light and Place in Australian Photography* (2015). Melissa's research papers on photography, art and design have been published in the world's leading journals including *Journal of Visual Culture*, *History of Photography*, *International Journal of Art and Design Education* and *Photographies*. Her current research projects focus on the significance of photography as a mode of public address, and on the relationships of photographic exchange between Australia and Japan.

Daniel Palmer is Associate Dean of Graduate Research and a Senior Lecturer in the Art History and Theory Program in the Faculty of Art, Design & Architecture at Monash University. He has a long-standing involvement with the Centre for Contemporary Photography in Melbourne, as a former curator and current board member. His publications include the books *Twelve Australian Photo Artists* (2009), co-authored with Blair French, and the edited volume *Photogenic: Essays/Photography/CCP 2000–2004* (2005). His scholarly writings on photography have appeared in journals such as *Photographies*, *Philosophy of Photography*, *Angelaki* and *Reading Room*. He is currently writing a book on photography and collaboration, and working on a research project around photography curating.

ABOUT THE CONTRIBUTORS

Denis Beaubois was born in Mauritius and lives in Sydney. His works have been exhibited internationally including: TATE Modern and San Francisco Museum of Modern Art (2010–2011); The Museum of Contemporary Art, Cleveland (2009); The Museum of Contemporary Art Sydney and The Zero One Biennale in San Jose (2008); The Museum of Contemporary Art Taipei and Wood St Galleries in Pittsburgh (2007); The SCAPE Biennale of Art in public space in New Zealand and The Rencontres Internationale Paris Berlin program (2006); The Santiago Biennale in Chile, the Adelaide Film Festival in Australia (2005) and the Transmediale programme in Berlin (2004). He has received numerous awards for his works, notably winning the 1998 Bonn Videonale (Germany), and receiving the Judges Special Prize for the Internationaler Medien Kunst Preis 2001, ZKM (Germany). Denis has trained and worked as a physical performer as member of performance ensemble Gravity Feed and the Post Arrivalists. He has also performed with Japanese company Gekidan Kaitaisha in the Drifting View X in Tokyo. He holds an MA in Photography and Performance as well as an MFA in Time Based Arts from COFA (University of New South Wales), where he also lectures in video art.

www.denisbeaubois.com

Cherine Fahd is a Sydney-based artist. She is a lecturer in photomedia at Sydney College of the Arts, The University of Sydney and a PhD candidate at Monash University. Cherine's photographic work is represented in major public collections in Australia such as the Art Gallery of New South Wales, the National Gallery of Victoria and the National Gallery of Australia. She is the recipient of numerous grants from the Australia Council for the Arts and art awards such as the NSW Women & Arts Fellowship from Arts NSW, the Josephine Ulrick and Win Schubert Foundation for the Arts Photography Award and the National Photography Prize.

www.cherinefahd.com

Alexandra Heller-Nicholas is an Adjunct Research Fellow at the Institute of Social Research at Swinburne University of Technology in Melbourne, Australia. She is the author of the books

Rape-Revenge Film: A Critical Study (2011) and *Found Footage Horror Film: Fear and the Appearance of Reality* (2014). She has published widely on representations of violence and gender.

Martyn Jolly is Head of Photography and Media Arts at the Australian National University School of Art. As an artist, his work is in the collection of the National Gallery of Australia, the National Gallery of Victoria and the Canberra Museum and Gallery. He writes frequently on contemporary and historical photography, and his book *Faces of the Living Dead: The Belief in Spirit Photography* was published in the United Kingdom, the United States and Australia in 2006. In 2011, he undertook research fellowships at the National Library of Australia and the National Film and Sound Archive.

Jon Rafman is an artist and film-maker born in 1981 in Montreal. He received his BA in English from McGill University and his MFA from the School of the Art Institute of Chicago and has exhibited at the New Museum, the Palais de Tokyo, the Saatchi Gallery and the Fridericianum. Inspired by the rich contradictions that technology presents, much of Rafman's work engages with the relationship of digital media to individual consciousness and social and cultural memory. His work has been featured in *Modern Painters*, *Frieze*, *Art in America*, *The New York Times* and *Artforum*.

www.jonrafman.com

Simon Terrill's work is a photographic engagement with groups and crowds that has involved large-scale orchestrated gatherings of communities in specific sites and also images of groups of people captured in motion, unaware of the camera's presence. The focus on the crowd is centred around an idea of a contrasting and oscillating space between the personal and the public, the individual and the collective and the impact of these fluid definitions on architecture, portraiture and the photograph. The works sometimes extend into sculpture, video, drawing and installation. Recent exhibitions include *Tilt* (Sutton Gallery, Melbourne), *Crowd Theory* (Adelaide, Samstag Museum of Art), *Balfron Project II* (National Trust Ernö Goldfinger Museum, Hampstead), *Negotiating this World: Contemporary Australian Art* (National Gallery of Victoria), *Rencontres d'Arles Book Awards Exhibition* (Parc des Ateliers, Arles), *The Piranesi Effect* (Ian Potter Museum of Art, Melbourne). He has been the recipient of a number of awards and grants including from the Arts Council England (2010), the Australia Council (2009, 2002 and 1998), Acme Studios' London Bow Cross Residency and The Anne & Gordon Samstag International Visual Arts Scholarship. Simon's works are held in public and private collections in the United Kingdom and Australia, and a monograph of his work titled *Proscenium* was published in 2011 by M.33 books.

www.simonterrill.com

Jessica Whyte is a Senior Lecturer in Cultural and Social Analysis at the University of Western Sydney, Australia. She has published widely on theories of sovereignty and biopolitics, critical legal theory, critiques of human rights and contemporary continental philosophy. Her current research is on the emergence of the “right to intervene” in the practices of the new activist humanitarian NGOs of the 1970s, and its transformation into a legitimising discourse for state militarism. She is the author of *Catastrophe and Redemption: The Political Thought of Giorgio Agamben* (SUNY Series in Contemporary Continental Philosophy, 2013).

Michael Wolf's photography is that of an outsider. Born in Germany, raised in the United States and Canada, returning to Germany to study photography before spending the vast majority of his career in Asia, his unusual background has allowed him to make the “other” his home. Wolf began his career as a photojournalist, spending over a decade working in Asia for the German magazine *Stern*. His willingness to explore different visual approaches, even abandoning the camera altogether to work with emerging image technology such as Google Street View, shows his ability to constantly renew and enrich his visual language. From the architecture of Hong Kong's tower blocks to the relentless compression of the Tokyo subway, from issues of privacy and voyeurism in the urban environment to the phenomenon of mass production within the increasingly globalized world of modern art, each of his series reveals a new facet of life in the city, assembling a complex, nuanced view that raises as many questions as it provides answers. Although he is constantly exploring new subjects and visual approaches, Michael Wolf's central theme has always remained the same, from his first series in a German mining village to his most recent work in Asia ... people, and the reality of their lives in our ever-changing cities.

www.photomichaelwolf.com

THE CULTURE OF PHOTOGRAPHY IN PUBLIC SPACE

edited by Anne Marsh, Melissa Miles and Daniel Palmer

From privacy concerns regarding Google Street View to surveillance photography's association with terrorism and sexual predators, photography as an art has become a complex terrain upon which anxieties about public space have been played out. Yet the photographic threat is not limited to the image alone. A range of social, technological, and political issues converge in relation to these anxieties and affect the practice, circulation, and consumption of contemporary public photography today. *The Culture of Photography in Public Space* collects essays and photographs that offer a new response to the restrictions imposed on photography in recent years by analyzing the events and the anxieties that have given rise to them.

Anne Marsh is a Professional Research Fellow at the Victorian College of the Arts, University of Melbourne. **Melissa Miles** is an Associate Professor in art history and theory, Australian Research Council Future Fellow and photography historian, and **Daniel Palmer** is Associate Dean of Graduate Research and Senior Lecturer in the faculty of Art, Design, and Architecture at Monash University.



intellect | www.intellectbooks.com

